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**MARK UP OF S. 1587 THE FEDERAL ACQUISITION
STREAMLINING ACT OF 1994**

**HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS
SECOND SESSION**

APRIL 26, 1994

Printed for the use of the Committee on Armed Services



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(II)

MARK UP OF S. 1587 THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994

TUESDAY, APRIL 26, 1994

**U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.**

The committee met, pursuant to notice, at 3:08 p.m., in room SR-222, Russell Senate Office Building, Senator Sam Nunn (chairman) presiding.

Committee members present: Senators Nunn, Levin, Bingaman, Glenn, Graham, Robb, Lieberman, Thurmond, Warner, Lett, Smith, and Kempthorne.

Committee staff members present: Arnold L. Punaro, staff director; David S. Lyles, deputy staff director; Andrew S. Effron, general counsel; Christine E. Cowart, chief clerk.

Professional staff member present: John W. Douglass.

Minority staff members present: Richard L. Reynard, minority staff director; Donald A. Deline, minority counsel; Jonathan L. Etherton, George W. Lauffer, and Steven C. Saulnier, professional staff members.

Staff assistants present: Kelli J. Corts, Debra F. Duncan, and Jacki Spivey.

Committee members' assistants present: Andrew W. Johnson, assistant to Senator Exon; Steven A. Wolfe, assistant to Senator Kennedy; Edward McGaffigan, Jr. and John P. Gerhart, assistants to Senator Bingaman; Terence M. Lynch, assistant to Senator Shelby; Lisa W. Tuite, assistant to Senator Byrd; Michael O. Thomas, assistant to Senator Graham; Jeremiah J. Gertler, assistant to Senator Robb; Randall A. Schieber, assistant to Senator Bryan; Dale F. Gerry, assistant to Senator Cohen; Samuel D. Adcock, assistant to Senator Lott; Richard F. Schwab, assistant to Senator Coats; Thomas L. Lankford, assistant to Senator Smith; Glen E. Tait, assistant to Senator Kempthorne; and George K. Johnson, Jr., assistant to Senator Hutchison.

Chairman NUNN. The committee will come to order.

The Committee on Armed Services meets today to mark up S. 1587, the Federal Acquisition Streamlining Act. In recent years, virtually every major legislative item acted on by the Committee on Armed Services has been included in the National Defense Authorization Act, which we will mark up this year beginning in mid May. The Federal Acquisition Streamlining Act is the first major freestanding bill we have taken up outside of the authorization cycle since we initiated the Goldwater-Nichols Department of Defense Reorganization Act of 1986.

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The Goldwater-Nichols Act established the basis for landmark changes in the management of the Defense Department which were of crucial importance to our military successes in the Persian Gulf War, and which continue to be of importance in every contingency that we are involved in, as well as in day-to-day operations. Just as the Goldwater-Nichols Act provided the legislative changes needed to facilitate the successful conduct of joint operations, I anticipate that this legislation will have an equally significant impact on the Federal acquisition process.

Over the last decade, the Congress and the executive branch have struggled to make sense out of the complex process of supplying our men and women in uniform with the best, the most cost effective weapon systems. In the 1980s, the need for reform was underscored by the spare parts horror stories, the criminal enterprises characterized by the Ill Wind prosecution, the frequency of cost overruns, and the increasing delays in fielding new systems.

At the same time, the graphic success of the equipment used by our armed forces in Operation Desert Storm illustrated the fact, overlooked by many of the critics before the war, that the acquisition system in place in the 1970s also could produce the finest weapon systems in the world. The problem, however, was and is that the system that produced those weapons took too long and cost too much.

In the aftermath of the Cold War, with the increasing pressure to reduce the defense budget, we cannot afford the huge cost associated with an inefficient acquisition system.

During the 1980s, acquisition laws and regulations proliferated as Congress and the executive branch attempted to balance the need for reform with the need to insure continued effective research and procurement. The result was a proliferation of often contradictory requirements that increasingly encumbered the acquisition process, as illustrated in testimony before the committee from the Department of Defense, from the industry witnesses, and from independent observers, including but not limited to the General Accounting Office.

Our hearings on acquisition reform, as well as our continuing oversight of the procurement process, have demonstrated that the current acquisition system is a bureaucratic nightmare. The process of procuring equipment and services for our military and civilian agencies takes too long, costs too much, and suffers under a crushing burden of wasted, wasteful overhead. We need to transform an outmoded system of regulating defense dependent industries into a new system that will enable the government to buy goods and services cheaper and faster, facilitate commercial-military integration, and encourage development of dual-use technologies to meet the defense industrial and technology based requirements of the future.

The bill before us today will enhance the ability of the Department of Defense, as well as other agencies of the Federal Government, to achieve these vital goals. Acquisition reform is not a particularly glamorous subject. The maze of statutes and regulations that govern the purchase of everything from pencils to nuclear submarines presents a daunting challenge to any reformer.

I want to commend the bipartisan leadership of each of the co-operating committees and subcommittees for their diligent attention that they brought to this subject. I want to start by paying particular tribute to Senator Jeff Bingaman, Chairman of our Subcommittee on Defense Technology Acquisition and Industrial Base.

Long before acquisition streamlining became fashionable, he had the vision to initiate legislation which was enacted as section 800 of the National Defense Authorization Act for Fiscal Year 1991, which required the Department to establish a government-industry panel to propose comprehensive reform. He had the tenacity to insist that a distinguished panel be appointed after DOD initially ignored the law, and he has played a leading role in developing the legislation that is before us.

So, Jeff, I think we all owe you a debt of gratitude for your leadership.

Senator Strom Thurmond, as ranking member of our committee and a long-time member of the Judiciary Committee, has brought an invaluable wealth of experience to the development of this legislation. And we are grateful to you, Senator Thurmond, for that.

Senator Glenn, as Chairman of the Government Affairs Committee and Chairman of our Subcommittee on Military Readiness and Defense Infrastructure, and his ranking member on the Governmental Affairs Committee, Senator Bill Roth, have been leaders in promoting government-wide procurement reform.

Senator Levin is Chairman of the Governmental Affairs Subcommittee on the Oversight of Government Management and as Chairman of the Subcommittee of Coalition Defense and Reinforcing Forces in our committee, has mastered the intricate details of the defense procurement system.

Senator Bill Cohen, the ranking member on the Government Management Subcommittee, and the ranking member of our Regional Defense Subcommittee, is one of the Senate's leading experts on the acquisition process.

Senator Bingaman has been greatly aided in his subcommittee efforts by the close working relationship with Senator Bob Smith, who has been an integral part of this process.

And I have to mention Senator Dale Bumpers, Chairman of the Small Business Committee, and his ranking member, Senator Larry Pressler, who have insured that the procurement system takes into account the special needs, capabilities, and contributions of the small business community. After we complete this bill, they will have sequential referral of a portion of the bill.

At this point I will turn to Senator Thurmond for his opening statement and then I will recognize any other member who would like to make an opening statement.

Senator Glenn did an excellent job of Presiding in the Governmental Affairs Committee this morning. I was there as a part of that committee. Following these remarks, I will outline in very brief form the substantive provisions of the bill we have before us, and then I will entertain a motion that we adopt the package, subject to amendment. And, of course, we will come back and any member will be eligible to bring up any amendment that is relevant to the bill. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

I would like to associate myself with your characterization of the bill before us as the single most important piece of legislation this committee has helped to produce since the Goldwater-Nichols Act of 1986. Then, as now, there was a growing need for change that had to be addressed through legislative action. New approaches and new risks had to be imposed on a reluctant organization.

The Federal Acquisition Streamlining Act is a similar response to the challenges of better management in an era of severely constrained resources. Defense funding continues to decline at a rate that I believe is unacceptable. The work force administering the procurement process in the Federal Government is set to undergo a substantial reduction. We must, therefore, develop ways to buy more with less and for less.

The legislation before us today lays the groundwork for meeting that challenge. If it is implemented in an effective manner, the Federal Acquisition Streamlining Act will make the government more accessible to commercial companies. We can avoid spending precious research and development funds for the products of such firms, and we can rely on the marketplace, rather than expensive government oversight, to set the price, terms, and conditions.

By raising the simplified acquisition threshold for most socio-economic statutes to \$100,000, the Act also provides for streamlining the administrative process followed by Federal employees. Finally, the bill includes provisions applying a similar set of rules and procedures to all Government Agencies to ensure a more uniform Federal system.

This legislation is not the final word on comprehensive acquisition reform. I am disappointed that the administration abandoned its stated support for a simple increase in the Davis-Bacon threshold to \$100,000, and that such an increase is not included in this bill. There are other areas that are not covered in this legislation, such as reducing government specifications and standards, that are more appropriately addressed by the executive branch in its internal procedures.

All in all, however, the Federal Acquisition Streamlining Act, as rewritten and approved by the Governmental Affairs Committee this morning, is a major step that will give Federal Agencies the necessary flexibility to procure goods and services in a more efficient manner.

Mr. Chairman, I look forward to your presentation of the details, although I will have to be gone part of it and will miss some of it. I want to thank you for your fine cooperation and the great work you are doing, and I am very pleased that you paid credit to so many who have had a part in this legislation. Thank you.

Chairman NUNN. Thank you very much, Senator Thurmond.

Senator Bingaman, Senator Glenn, Senator Smith, anyone else who has an opening statement, we will glad to hear from you.

Senator BINGAMAN. Yes. Mr. Chairman, let me make a few statements here. First, let me thank you and all the others who have worked so hard on this. We have had a very good bipartisan effort and a bicommitttee effort with the Governmental Affairs Committee, and particularly at the staff level I think that they have done yeoman's work. They have had a working group of staff from Government Affairs and our committee. And, of course, Andy Effron

and Jon Etherton with our committee have carried the lead on that.

There is a group of staffers on Senator Glenn's committee who I think have done a tremendous job as well: Tom Sisti, John Brosnan, Peter Levine, Paul Brubaker, and Mark Foreman. And, of course, Bill Montalto has been very actively involved on behalf of the Small Business Committee. So we have had a good working group. In my staff, Ed McGaffigan, John Gerhart and Mike Hammon have also worked very hard on this.

Chairman NUNN. I join you in that, Senator Bingaman. They have all done a splendid job and a remarkable job of working together.

Senator BINGAMAN. Mr. Chairman, I would just say that I think this bill is a very constructive step forward. And I think it is very different from the kinds of legislation we traditionally consider in the acquisition area in this committee. I know that you have been frustrated, I have been frustrated, and Senator Glenn has been frustrated that as we have written defense authorization bills in the past, it seemed like we were always busy trying to kill the alligators and never looked at how to drain the swamp, as the saying goes. But we were always reacting to some crisis that had been presented in the acquisition area, or some exposé that had come out in the newspaper.

I think this bill represents a real departure from that. Really for the first time since I have been around here, we have tried to get out ahead of the problem. The Section 800 panel, which Admiral Vincent headed, I think did yeoman's work in going through and really doing the detailed expert analysis that was needed in order to legislate in this area.

We have been very fortunate that Senator Glenn and the Governmental Affairs Committee has taken the work they have done previously and added to that. And, of course, Senator Smith and I have tried to do the same thing in our subcommittee. I feel very good about the prospects of getting this passed.

I do think the point needs to be made that this is not the final product that we are passing today. There are still several more steps in this process. We have to go to the floor with a bill, we have to go to conference after that. There are opportunities to improve this product, and we are looking for constructive suggestions as to how to do that, because there clearly are things that will be identified, that ought to be changed or improved. I am certainly open to those kinds of suggestions; I am sure Senator Glenn is as well.

But I think, by and large, it is a major step forward. The fact that it does not do everything is certainly true, but it does a lot more than we have ever done, in a proactive way, to deal with acquisition problems. So I compliment everybody involved. And Senator Glenn especially. He has taken the lead on this and deserves great credit.

Chairman NUNN. Thank you, Senator Bingaman. Senator Glenn.

Senator GLENN. Thank you, Mr. Chairman, and thank you very much, Jeff. And I think in many respects we could call this the grunt work of government. It is not as glamorous as watching maneuvers out at the national training center or covering B-2 flights or supersonic F-15s or maneuvers. We think of defense budgeting,

of appropriations and the authorization process. Yet savings through better efficiency is just as effective as those processes in providing needed funds for defense. It is just as effective as an appropriation or an authorization.

That is what we are after here, better efficiency in making use of the dollars that we have by streamlining the whole process. This bill is the result of several years of effort. Jeff has worked with the 800 panel, our work at the Governmental Affairs Committee, along with Sam and others on this committee. I think we ought to also credit the Pentagon, Secretary Perry has a personal interest in reform, and Deputy Secretary Deutch has been very much involved.

As Jeff says, this legislation does not do everything for everybody. It is not the end, but it is a starting point and I think a very good starting point. I do not think we are going to have to make too many more modifications to the bill. We have reworked it several times over the past year and a half with the involvement of the administration and the NPR.

There are three things that came together on this: our work at Governmental Affairs Committee; the work of this committee and the 800 panel. Jeff's leadership on the 800 panel was quite significant. Then the new administration came in and made some of the same recommendations through the Vice President's NPR. This legislation is really a melding of all of those elements, and goes a long way toward reforming the acquisition system.

So, thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator Glenn. Senator Smith.

Senator SMITH. Thank you, Mr. Chairman. I also would like to add my appreciation to Senator Bingaman for the splendid bipartisan way in which he has worked with me, and thank him and his staff and certainly Jon Etherton for his assistance as well.

Mr. Chairman, I join you and others who have spoken in supporting the Federal Acquisition Streamlining Act of 1993 as an important and fundamental step toward a comprehensive reform of the Federal procurement process. This bill will provide the Federal agencies with the tools that they desperately need to run government procurement along more commercial lines while insuring that the taxpayer's interests are protected as well.

We have seen, since 1983, the number of statutes governing acquisition grow at a rate probably only exceeded by the national debt. Some of this legislation, such as the Competition and Contracting Act, was long overdue, but many of the other provisions were driven in piecemeal fashion by basically individual media stories.

The net effect of the latter has been to add significantly to the cost of doing business with the Federal Government. It is fortunate that Senator Bingaman and others persisted, Senator Glenn, in Section 800 of the Defense Authorization Act for the Fiscal Year 1990, in establishing a government-industry commission to review all of the current laws with a view towards streamlining the process. The so-called Section 800 Commission Report has been the impetus for breaking the cycle of this piecemeal legislation on annual defense authorization bills.

The substitute amendment to S. 1587 represents the most fundamental reform of acquisition laws in the last 10 years. And as

others have pointed out, the legislation removes most of the significant barriers to the acquisition of commercial products by the Federal Government. Raising the simplified acquisition threshold for many socioeconomic and other statutes to \$100,000 should help to reduce the cost for Federal Agencies to administer the system.

In light of the improvements that are included in the substitute amendment, I must also say that I am concerned and somewhat disappointed, frankly, that the administration, while advertising its commitment to reform, has failed to follow the recommendation in the National Performance Review, which was to raise the Davis-Bacon threshold to \$100,000. As I pointed out last October, a commitment to reform must be supported by a willingness to take on the special interests. I would point out that, according to the CBO, we could save \$140 million in outlays over the next 5 years by just simply raising the Davis-Bacon threshold. And this was, as you remember, recommended by the Vice President in October.

The signal we send by failing to address this issue is that those streamlining provisions in this bill, which all affect special interests are basically up for grabs, and that is something that I fear may happen when we get to the floor. I do not want to see us undermine the bipartisan cooperation that has been the hallmark of this legislation, merely to appease the special interests. I intend to pursue this matter at whatever the appropriate time may be after discussion with the chairman.

Nonetheless, I support this legislation, based on the greater access to commercial products it affords and for the efficiencies in the administration it promotes. This legislation will serve as a springboard for broader economic and systematic reform within the executive branch. I look forward to expeditious Senate action. Thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator Smith. Senator Lott, Senator Kempthorne, do either of you have any opening remarks?

Senator KEMPTHORNE. Mr. Chairman, I do.

Chairman NUNN. Senator Kempthorne.

Senator KEMPTHORNE. Mr. Chairman, I would like to also acknowledge Senator Bingaman and Senator Smith for taking on what at times can seem like a tedious task, but which is in fact critically important. I want to commend them for their close cooperation with Senator Glenn and his committee.

Mr. Chairman, it is my understanding that the Governmental Affairs Committee approved the proposed substitute that had been worked out among the leaders of the three committees, with one exception, which was an amendment by Senator Stevens, which was adopted which removed from the bill the sections that would have waived cargo preference laws for suppliers of commercial items and items below the \$100,000 simplified acquisition threshold.

I am concerned that this action could affect the goal of the bill in terms of encouraging the acquisition of commercial products.

Chairman NUNN. Senator Kempthorne, I was there this morning when Senator Stevens moved to take that out. He made the point that he thought the language on the cargo preference went beyond what was necessary to fulfill the bill's purposes in fulfilling the acquisition of commercial products.

However, it is my understanding that the administration believes it is possible to craft language that will meet the purpose of the bill in a manner that preserves the vital features of the Cargo Preference Act. I have been advised the Departments of Defense and Transportation will be meeting to develop language that will reform both cargo preference and the acquisition reform effort, so my understanding is they are working on that now. Is that your understanding, Senator Glenn?

Senator GLENN. My understanding is that it is also being taken up at the Commerce Committee. That was another point he made this morning. They are going into this in great depth. They have gone into it in greater depth than we did in this, and that is the reason we took it out, because they are going to take action in the Commerce Committee.

So we reserve the right, obviously, to put this back on the floor, but we thought since they were taking this up in real detail, the action that we took this morning with Senator Stevens was the one to take. I supported that, although I had originally thought we wanted to leave the cargo preference the way it was, but they are doing a lot of work on this in Commerce, and that was fine with me.

Senator KEMPTHORNE. Mr. Chairman, I appreciate your comments and the comments of Senator Glenn.

Mr. Chairman, then, do you believe there will be an administrative proposal before we go to the floor with this?

Chairman NUNN. I will urge that. It is my understanding they are working on that now, and I would urge that they do that, and I certainly would be glad to get a letter to them urging them to do that.

Senator KEMPTHORNE. All right. I appreciate that very much, Mr. Chairman. Thank you.

Chairman NUNN. It is hard to tell when this is going to go to the floor, because the Small Business Committee, as I mentioned a few minutes ago, has the right of 20 days. I believe we have 30 days after officially getting the Governmental Affairs mark. We are moving, of course, expeditiously, but the Small Business Committee has the right to have a 20-day referral there. It is hard to tell whether they will avail themselves of that or not.

Senator Smith, you made reference to the Davis-Bacon Act. I have supported reform of that myself on the floor. I do not know what the Governmental Affairs rationale was on this, but I think if our committee put it on the bill here, it would cause all sorts of jurisdictional problems. It certainly would be appropriate if you choose to bring Davis-Bacon up on the floor.

Senator GLENN. Mr. Chairman, I am told by the staff that the administration is having a meeting tomorrow between DOD and OFPP and Commerce people as to what their position is going to be on this, so they are starting to move on it right now, and I certainly hope that we can have that all finalized before this comes out on the floor.

Senator LOTT. Are you talking about cargo preference?

Senator GLENN. Yes, cargo preference.

Chairman NUNN. Now, on Davis-Bacon, I do not have any understanding about anybody working on that. That might be a different one.

Senator SMITH. Mr. Chairman, is it your position, personal position, that we would raise the threshold? Do you support that on the floor?

Chairman NUNN. I have always felt that that was the thing to do.

Now, if the question is whether I support it over the period of time, it depends on whether I think it is going to bog down the whole bill or not, so I have to reserve judgment.

Senator SMITH. Obviously, it has more impact when it comes onto the floor as part of the package than it does if it is offered as an amendment, especially by a Republican conservative, to be honest with you. [Laughter.]

But I understand the jurisdictional problem. I tried to make contact with you, and I apologize that I just did not get to you.

Chairman NUNN. Yes, I know. The procedural situation we have in here is if we have an amendment to this bill that has come out of the Governmental Affairs Committee, which will be the vehicle on the floor, if we decide today we want to amend it in any respect, it will come up as a committee amendment on the floor and would have to be affirmatively adopted.

Now, procedurally, when we get to the end of this, we are going to probably ask the committee to approve our own original legislation so that that will also be on the floor, but the vehicle we will be marking on the floor will be the one coming out of the Governmental Affairs Committee, and that would require a committee amendment, so the committee amendment procedurally would have to be affirmatively adopted just as an individual amendment would have to be affirmatively adopted.

Correct me if I am wrong on that, Andy. Is that right?

Mr. EFFRON. That is correct, Mr. Chairman.

Chairman NUNN. Let me announce that Senator Glenn has a meeting at 4:00 p.m. I do not know how many amendments we have. Certainly we are open to amendments. My explanation here will take approximately 4 or 5 minutes. It will be my intent, as soon as we have a quorum, to vote on the bill subject to amendment, and we have less than a quorum here now, so if I could get the staff members who believe they have any influence at all with their Senators to please call them, I would appreciate it. [Pause.]

No one has left the room yet. I do not know what that indicates. [Laughter.]

But I would hope you would call, and any time we get a quorum, we will get an immediate vote, so if you just would notify your Senators that we will vote as soon as we get a quorum here—I see more are leaving than I thought. thank you. [Laughter.]

Senator GLENN. My staff wanted to leave along with them, Sam, but they are still here. [Laughter.]

Chairman NUNN. Let me review just briefly the painstaking process that has been used to develop this legislation.

For those who might have tuned in late, they might wonder how we can move a significant bill in what appears to be a brief period of time, though it has not been a brief period of time.

First, the Section 800 advisory panel completed a mammoth undertaking. They produced an 1,800-page report in December 1992. They reviewed more than 600 procurement laws and proposed to amend or repeal nearly 300 laws. The panel presented its report to our committee at a hearing on March 10, 1993.

I want to say on behalf of the committee—it has already been alluded to by Senator Bingaman and Senator Glenn and Senator Smith that this panel—you are talking about tough work. They did it, and they deserve an enormous amount of credit for what they produced in a very comprehensive report. If any of them are here today, I would hope you would convey that to all of your associates, but without that work, this would not have been possible. It is just that simple.

In the spring of 1993, the bipartisan leadership of the Armed Services, Governmental Affairs, and Small Business Committees directed our staffs to undertake a joint review of the Section 800 Report with a view toward developing implementing legislation. In a parallel and very important review, Vice President Gore's National Performance Review examined the acquisition system and endorsed many of the procurement streamlining recommendations of the Section 800 panel. That was a very significant forward thrust for this effort.

The bipartisan, tri-committee effort produced S. 1587, the Federal Acquisition Streamlining Act, which was introduced on October 26, 1993. The bill was then available for more than 4 months before hearings began, which provided the opportunity for review and comment on specific legislative proposals.

We then held three joint hearings with the Governmental Affairs Committee, at which we heard from the administration, industry, the oversight community, and other interested parties. Following that hearing, we directed our staffs on all three committees to review each comment and recommendation and to propose changes to S. 1587, so the bill we are considering before us today reflects all of that effort.

The bill before us contains more than 300 pages of amendments to the acquisition law. Most of these are repeals or modifications that reduce rather than add to the body of acquisition legislation.

The proposed statutory changes are detailed and complex. The underlying issues, however, involve the foundations of the acquisition process, auditing practices, oversight activities, competition in contracting, paperwork reduction, integration of the government and commercial sectors, simplified small purchases, and strengthening the technology and industrial base.

The bill makes the following key changes in the law. First, the bill revises and consolidates numerous acquisition statutes to eliminate redundancy, provide consistency, and facilitate implementation. Second, the bill encourages the acquisition of commercial end-items and components, including acquisition of commercial products that are modified to meet government needs by exempting commercial items from government unique certifications and accounting requirements that serve as a disincentive for commercial companies to participate in government acquisitions and which add to the cost when they choose to participate. That is the key to this legislation more than any other single thing.

The purchase of proven products such as commercial and nondevelopmental items can eliminate the need for research and development, can minimize acquisition lead time, reduce the need for detailed design specifications, which literally tie up tens of thousands of people in our bureaucracy, and also eliminate expensive testing in some cases.

Third, the bill raises the threshold for the use of simplified acquisition procedures from \$25,000 to \$100,000. Although purchases under \$100,000 account for only 16 percent of the government's procurement expenditures, they account for 96 percent of the government's procurement actions, so we are talking about a major amount of reduction here and simplification. This generates huge manpower and paperwork requirements for relatively small contracts.

The use of simplified procedures will save time, money, and manpower.

Fourth, the bill revises and simplifies the bid protest procedure. Fifth, the bill consolidates and simplifies the confusing and often contradictory rules that govern the relationship between government and private sector procurement personnel.

Finally, the bill promotes efficiency by establishing procedures that will apply on a uniform basis to both the Department of Defense and civilian agencies to the maximum extent practicable.

This will greatly facilitate the ability of suppliers, particularly in the commercial sector, to meet the needs of the Government without excessive overhead.

As I noted earlier, S. 1587 was introduced last October. The changes now before us which were developed by three committees were made available last week. Although no member has advised the committee of an intent to offer any further amendments at this time, this is certainly the right of any member. It is my hope that we can proceed as expeditiously as possible so we can move this bill to the floor, and through the Senate before we actually begin the markup on the National Defense Authorization Act. We will wait and see whether that is possible.

As soon as we get a quorum, I would like, in accordance with our traditional practice, to entertain a motion that the bipartisan tri-committee package be adapted as the markup vehicle subject to amendment.

I am told we have a working quorum to adopt that motion, though not to report the bill yet, so we could have a motion on that.

Senator BINGAMAN. I so move.

Chairman NUNN. Is there a second?

Senator THURMOND. I second.

Chairman NUNN. All in favor, signify by saying aye. [A chorus of ayes.]

Now the bill is open to amendment. Are there any amendments, or does anyone know of any amendments? [No response.]

Senator GLENN. That means you did a perfect job. That is unprecedented. [Laughter.]

Well, I hope we can get a quorum. I really think, with the magnitude of this bill, we have to have a quorum. This is a big bill.

Senator SMITH. Mr. Chairman, based on your comments, I have decided to withhold until the floor action on the Davis- Bacon, and

also I will discuss this with Senator Thurmond. I understand the position you are in here.

I wish that it could be addressed here because of the fact that it is part of the administration's original proposal, and let us face it, we know it is a lot easier if it is done in here and sent out that way than it is having to put in the provisions on the floor, so with some reluctance I will acquiesce to you.

Chairman NUNN. Thank you, Senator Smith, I think that will facilitate matters. I do not think it will make a difference on the vote on the floor, because procedurally either way you have to pass the amendment with a majority vote.

Senator GLENN. How many more do we need, Sam? Do we need a total of 11?

Chairman NUNN. Somebody who can count above 10, tell us how many more we need. [Pause.]

Let me explain the procedure here. As soon as we have a quorum, we will move to it. I will propose that we report out the results by markup in several formats. First, I will recommend that we report out the results of our markup as an original bill.

Second, I recommend that we report out the identical provision as an amendment to S. 1587, which will be referred to us formally as soon as the Government Affairs Committee files its report, and those are the motions that I would like to have when we get the quorum here.

Let me mention one thing. There are concerns in the small business community not as to the bill itself, from what I understand, but they are concerned as to what may happen in the writing of the regulations. I think that is a very legitimate concern, and I would like for our report language, if I could ask Andy and Jon, to make a very strong point that this committee, working with the Small Business Committee, is going to be reviewing the regulations to make sure they are faithful to the spirit as well as the letter of the law, and also to make sure that the small business community is not basically left out of the considerations here.

It is always easier for any bureaucracy to deal with 1 company rather than 10, 1 big company rather than 10. The thing we do not want to happen is for the kind of competition we really need in this area to be impeded by leaving out the small business community in consideration of some very practical applications, so unless there is some objection to that kind of strong language about the small business concerns and the writing of the regulations, as well as the law itself, I would like the staff to reflect that in our report. Any objection to that? [No response.]

Senator GLENN. Mr. Chairman, I would certainly support that wholeheartedly. As you were speaking, I was just sitting here thinking that maybe we could even go a step further. You know, OMB has embarked on a program to make sure we cut back on unneeded regulations, and everybody's view is considered. They have a real program underway that we have worked with them on.

The size of this bill, it seems to me, would almost dictate that they give that the same kind of special treatment since this legislation is going to affect procurement and the way everybody does business with the government.

It would seem to me that we might even do a letter to OMB telling OMB we are concerned, and that small business is concerned in particular, about the implementation of all of this. They should make this a special project to make sure that the bureaucrats do not write a lot of obnoxious regulations that undercut some of the things that we are trying to do here.

Chairman NUNN. Senator Glenn, I would be glad to join you in that kind of letter. Maybe we can get Senator Bumpers to join us, too, and we could get our staffs and the Ranking Member to join us on a letter to that effect.

Senator THURMOND. [Nods affirmatively.]

Chairman NUNN. Andy, if you would make sure that you and Jon work together so that I get a letter reflecting my dialogue with Senator Kempthorne, we need to get that done immediately, because any kind of floor amendment of this bill that comes up in May that relates to cargo preference needs to be expedited. [Pause.]

Senator ROBB. Mr. Chairman, while we have a second here, let me say that I apologize. I was unable to attend the first part of the meeting. I was literally quadruple scheduled for this particular bloc in time, but I understand that the concerns that I had have at least been partially addressed by staff with respect to the professional services being included, and I would just like to say that I would like to continue to work with Members or others to address this particular question as the bill is refined and as we move down the road on this.

I know definitions sometimes are a little bit tricky, and it does not lend itself to the easy resolution that some of the more tangible procurement does, but I think it clearly needs to be covered, and I appreciate the fact that we have made a start in that direction.

Chairman NUNN. Thank you very much, Senator Robb. I appreciate that comment.

Andy, do you or Jon, either one of you, want to comment on that?

Mr. EFFRON. We have been working with Senator Robb and his staff, as well as the Governmental Affairs and Small Business Committees on the definition of services for purposes of commercial products, and will continue to work with them to see what further amendments we can develop for the members' consideration before we go to the floor.

Chairman NUNN. Jon?

Mr. ETHERTON. I have nothing to add to that explanation of our current process, sir.

Chairman NUNN. You have worked so much on it, do you want to say anything just gratuitously? [Laughter.]

Mr. EFFRON. We also do not have any influence over the absent Members. [Laughter.]

Chairman NUNN. Apparently not.

Senator THURMOND. I want to commend you all for the fine job you have done on this bill.

Senator GLENN. Here, here.

Mr. EFFRON. Thank you, Senator.

Senator THURMOND. These very capable staff members have handled this bill and have done a fine job. [Pause.]

Chairman NUNN. The second motion, I would like us to report out the results of this markup as an original bill. Is there a motion on that?

Senator THURMOND. I so move.

Chairman NUNN. Is there a second?

Senator LEVIN. I second.

Chairman NUNN. The motion is seconded.

The third motion is that we report out the identical provisions as an amendment to S. 1587, which will be referred to us as soon as the Governmental Affairs Committee files its report. Do I have a motion on that?

Senator GLENN. I so move.

Chairman NUNN. Is there a second?

Senator THURMOND. Second.

Chairman NUNN. All right. We have three motions.

Senator Levin is now entering the room. [Applause.]

Senator LEVIN. No. [Laughter.]

Chairman NUNN. Senator Levin, we do not care how you vote. [Laughter.]

Senator LEVIN. In that case, I am leaving.

Chairman NUNN. We do not care how you vote. All we want is your body.

Everyone in favor of the second motion signify by saying aye. [A chorus of ayes.]

On the third motion, let us have a roll call and then the absent Members can recall their votes. That is on S. 1587.

Mr. PUNARO. Mr. Exon. [No response.]

Mr. PUNARO. Mr. Levin.

Senator LEVIN. Aye.

Mr. PUNARO. Mr. Kennedy. [No response.]

Mr. PUNARO. Mr. Bingaman.

Senator BINGAMAN. Aye.

Mr. PUNARO. Mr. Glenn.

Senator GLENN. Aye.

Mr. PUNARO. Mr. Shelby. [No response.]

Mr. PUNARO. Mr. Byrd. [No response.]

Mr. PUNARO. Mr. Graham.

Senator GRAHAM. Aye.

Mr. PUNARO. Mr. Robb.

Senator ROBB. Aye.

Mr. PUNARO. Mr. Lieberman.

Senator LIEBERMAN. Aye.

Mr. PUNARO. Mr. Bryan. [No response.]

Mr. PUNARO. Mr. Thurmond.

Senator THURMOND. Aye.

Mr. PUNARO. Mr. Warner.

Senator WARNER. Aye.

Mr. PUNARO. Mr. Cohen.

Senator THURMOND. Aye by proxy.

Mr. PUNARO. Mr. McCain.

Senator THURMOND. Aye by proxy.

Mr. PUNARO. Mr. Lott.

Senator LOTT. Aye.

Mr. PUNARO. Mr. Coats.

Senator THURMOND. Aye by proxy.

Mr. PUNARO. Mr. Smith.

Senator SMITH. Aye.

Mr. PUNARO. Mr. Kempthorne.

Senator KEMPTHORNE. Aye.

Mr. PUNARO. Mr. Faircloth.

Senator THURMOND. Aye by proxy.

Mr. PUNARO. Mrs. Hutchison.

Senator THURMOND. Aye by proxy.

Mr. PUNARO. Mr. Chairman.

Chairman NUNN. Aye.

We will leave the record open until 7:00 p.m. tonight. Would the clerk announce the results?

Mr. PUNARO. It is 17 ayes, no noes.

Mr. EFFRON. Mr. Chairman, there is a further motion on the next page. It is for technical amendments.

Chairman NUNN. All right. We need one more motion on technical. Let the staff be authorized on technical amendments. Is there objection? [No response.]

Without objection, thank you very much.

[Whereupon, at 3:59 p.m., the committee adjourned.]

[NOTE: The Armed Services and Governmental Affairs Committees conducted joint hearings in 1994 on S. 1587, on February 24, March 10, and March 16. These hearings will be printed by the Senate Committee on Governmental Affairs. The Governmental Affairs Committee held a markup on April 26, 1994 and subsequently reported S. 1587, as amended, to the Senate on May 11, 1994 (Senate Report 103-258). The Armed Services Committee approved reporting the bill to the Senate on May 12, 1994 (Senate Report 103-259). The transcript of the May 12, 1994 markup proceedings will be printed in the compilation of proceedings on nominations, which will be published by the Armed Services Committee at the end of the 103rd Congress.]

COMMITTEE AMENDMENT

Viz:

- 1 Strike out all after the enacting clause and insert in
- 2 lieu thereof the following:

- 3 **SECTION 1. SHORT TITLE.**

- 4 This Act may be cited as the "Federal Acquisition
- 5 Streamlining Act of 1994".

- 6 **SEC. 2. TABLE OF CONTENTS.**

- 7 The table of contents for this Act is as follows:

TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

PART I—ARMED SERVICES ACQUISITIONS

SUBPART A—COMPETITION REQUIREMENTS

- Sec. 1001. References to Federal Acquisition Regulation.
- Sec. 1002. Exclusion of particular sources.
- Sec. 1003. Approval for use of noncompetitive procedures.
- Sec. 1004. Task order contracts for advisory and assistance services.
- Sec. 1005. Acquisition of expert services.

SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

- Sec. 1011. Source selection factors.
- Sec. 1012. Solicitation provision regarding evaluation of purchase options.
- Sec. 1013. Prompt notice of award.
- Sec. 1014. Post-award debriefings.
- Sec. 1015. Protest file.
- Sec. 1016. Award of costs and fees in agency settlement of protests.
- Sec. 1017. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

- Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.
- Sec. 1022. Technical and conforming amendments.

SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

- Sec. 1031. Repeal of requirement for annual report by advocates for competition.

PART II—CIVILIAN AGENCY ACQUISITIONS

SUBPART A—COMPETITION REQUIREMENTS

- Sec. 1051. References to Federal Acquisition Regulation.
- Sec. 1052. Exclusion of particular sources.
- Sec. 1053. Approval for use of noncompetitive procedures.
- Sec. 1054. Task order contracts for advisory and assistance services.
- Sec. 1055. Acquisition of expert services.
- Sec. 1056. Continued occupancy of leased space.

SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

- Sec. 1061. Solicitation, evaluation, and award.
- Sec. 1062. Solicitation provision regarding evaluation of purchase options.
- Sec. 1063. Prompt notice of award.
- Sec. 1064. Post-award debriefings.
- Sec. 1065. Protest file.
- Sec. 1066. Award of costs and fees in agency settlement of protests.
- Sec. 1067. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

- Sec. 1071. Agency head determination regarding use of cost type or incentive contract.
- Sec. 1072. Multiyear contracting authority.
- Sec. 1073. Severable services contracts crossing fiscal years.
- Sec. 1074. Economy Act purchases.

PART III—ACQUISITIONS GENERALLY

- Sec. 1091. Policy regarding consideration of contractor past performance.
- Sec. 1092. Repeal of requirement for annual report on competition.

Subtitle B—Truth in Negotiations**PART I—ARMED SERVICES ACQUISITIONS**

- Sec. 1201. Stabilization of dollar threshold of applicability.
- Sec. 1202. Exceptions to cost or pricing data requirements.
- Sec. 1203. Limitation on authority to require a submission not otherwise required.
- Sec. 1204. Additional special rules for commercial items.
- Sec. 1205. Right of United States to examine contractor records.
- Sec. 1206. Required regulations.
- Sec. 1207. Consistency of time references.
- Sec. 1208. Repeal of superseded provision.

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 1251. Revision of civilian agency provisions to ensure uniform treatment of cost or pricing data.
- Sec. 1252. Repeal of obsolete provision.

Subtitle C—Research and Development

- Sec. 1301. Research projects.
- Sec. 1302. Elimination of inflexible terminology regarding coordination and communication of defense research activities.

Subtitle D—Procurement Protests

3

PART I—PROTESTS TO THE COMPTROLLER GENERAL

- Sec. 1401. Protest defined.
- Sec. 1402. Review of protests and effect on contracts pending decision.
- Sec. 1403. Decisions on protests.
- Sec. 1404. Regulations.

PART II—PROTESTS IN THE FEDERAL COURTS

- Sec. 1421. Nonexclusivity of remedies.
- Sec. 1422. Jurisdiction of the United States Court of Federal Claims.

PART III—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING

- Sec. 1431. Revocation of delegations of procurement authority.
- Sec. 1432. Authority of the General Services Administration Board of Contract Appeals.
- Sec. 1433. Periods for certain actions.
- Sec. 1434. Dismissals of protests.
- Sec. 1435. Award of costs.
- Sec. 1436. Dismissal agreements.
- Sec. 1437. Jurisdiction of district courts.
- Sec. 1438. Matters to be covered in regulations.
- Sec. 1439. Definitions.

Subtitle E—Definitions and Other Matters**PART I—ARMED SERVICES ACQUISITIONS**

- Sec. 1501. Definitions.
- Sec. 1502. Delegation of procurement functions.
- Sec. 1503. Determinations and decisions.
- Sec. 1504. Unfinalized contractual actions: restrictions.
- Sec. 1505. Production special tooling and production special test equipment: contract terms and conditions.
- Sec. 1506. Regulations for bids.

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 1551. Definitions.
- Sec. 1552. Delegation of procurement functions.
- Sec. 1553. Determinations and decisions.
- Sec. 1554. Cooperative purchasing.

TITLE II—CONTRACT ADMINISTRATION**Subtitle A—Contract Payment****PART I—ARMED SERVICES ACQUISITIONS**

- Sec. 2001. Contract financing.
- Sec. 2002. Contracts: vouchering procedures.

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2051. Contract financing.

Subtitle B—Cost Principles

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2101. Allowable contract costs.
- Sec. 2102. Contract profit controls during emergency periods.

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2151. Allowable contract costs.

PART III—ACQUISITIONS GENERALLY

- Sec. 2191. Travel expenses of government contractors.

Subtitle C—Audit and Access to Records**PART I—ARMED SERVICES ACQUISITIONS**

- Sec. 2201. Consolidation and revision of authority to examine records of contractors.

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2251. Authority to examine records of contractors.

Subtitle D—Cost Accounting Standards

- Sec. 2301. Exceptions to coverage.
- Sec. 2302. Repeal of obsolete deadline regarding procedural regulations for the Cost Accounting Standards Board.

Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality**PART I—ARMED SERVICES ACQUISITIONS**

- Sec. 2401. Procurement of critical aircraft and ship spare parts; quality control.
- Sec. 2402. Contractor guarantees regarding weapon systems.

PART II—ACQUISITIONS GENERALLY

- Sec. 2451. Section 3737 of the Revised Statutes: expansion of authority to prohibit setoffs against assignees; reorganization of section; revision of obsolete provisions.
- Sec. 2452. Repeal of requirement for deposit of contracts with GAO.

Subtitle F—Claims and Disputes**PART I—ARMED SERVICES ACQUISITIONS**

- Sec. 2501. Certification of contract claims.
- Sec. 2502. Shipbuilding claims.

PART II—ACQUISITIONS GENERALLY

- Sec. 2551. Claims jurisdiction of United States district courts and the United States Court of Federal Claims.
- Sec. 2552. Contract Disputes Act improvements.
- Sec. 2553. Extension of alternative dispute resolution authority.
- Sec. 2554. Expedited resolution of contract administration complaints.

TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES

Subtitle A—Major Systems Statutes

- Sec. 3001. Requirement for independent cost estimates and manpower estimates before development or production.
- Sec. 3002. Enhanced program stability.
- Sec. 3003. Repeal of requirement to designate certain major defense acquisition programs as defense enterprise programs.
- Sec. 3004. Repeal of requirement for competitive prototyping in major programs.
- Sec. 3005. Repeal of requirement for competitive alternative sources in major programs.

Subtitle B—Testing Statutes

- Sec. 3011. Director of Operational Test and Evaluation to report directly to Secretary of Defense.
- Sec. 3012. Responsibility of Director of Operational Test and Evaluation for live fire testing.
- Sec. 3013. Requirement for unclassified version of annual report on operational test and evaluation.

Subtitle C—Service Specific Laws

- Sec. 3021. Gratuitous services of officers of certain reserve components.
- Sec. 3022. Civil Reserve Air Fleet.
- Sec. 3023. Exchange of personnel.
- Sec. 3024. Scientific investigation and research for the Navy.
- Sec. 3025. Construction of combatant and escort vessels and assignment of vessel projects.
- Sec. 3026. Repeal of requirement for construction of vessels on Pacific coast.
- Sec. 3027. Authority to transfer by gift a vessel stricken from Naval Vessel Register.
- Sec. 3028. Naval salvage facilities.

Subtitle D—Department of Defense Commercial and Industrial Activities

- Sec. 3051. Factories and arsenals: manufacture at.
- Sec. 3052. Accounting requirement for contracted advisory and assistance services.

Subtitle E—Fuel- and Energy-Related Laws

- Sec. 3061. Liquid fuels and natural gas: contracts for storage, handling, or distribution.

Subtitle F—Fiscal Statutes

- Sec. 3071. Disbursement of funds of military department to cover obligations of another agency of Department of Defense.

Subtitle G—Miscellaneous

- Sec. 3081. Obligation of funds: limitation.
- Sec. 3082. Repeal of requirements regarding product evaluation activities.

- Sec. 3083. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.
- Sec. 3084. Soft drink supplies for exchange stores.
- Sec. 3085. Repeal of preference for recycled toner cartridges.

TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS

Subtitle A—Simplified Acquisition Threshold

PART I—ESTABLISHMENT OF THRESHOLD

- Sec. 4001. Simplified acquisition threshold.

PART II—SIMPLIFICATION OF PROCEDURES

- Sec. 4011. Simplified acquisition procedures.
- Sec. 4012. Small business reservation.
- Sec. 4013. Fast payment under simplified acquisition procedures.
- Sec. 4014. Procurement notice.
- Sec. 4015. Electronic commerce for Federal Government procurements.

PART III—APPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

- Sec. 4021. Future enacted procurement laws.
- Sec. 4022. Armed services acquisitions.
- Sec. 4023. Civilian agency acquisitions.
- Sec. 4024. Acquisitions generally.

PART IV—CONFORMING AMENDMENTS

- Sec. 4071. Armed services acquisitions.
- Sec. 4072. Civilian agency acquisitions.
- Sec. 4073. Office of Federal Procurement Policy Act.
- Sec. 4074. Small Business Act.

PART V—REVISION OF REGULATIONS

- Sec. 4081. Revision required.

Subtitle B—Socioeconomic and Small Business Laws

- Sec. 4101. Armed services acquisitions.
- Sec. 4102. Acquisitions generally.
- Sec. 4103. Acquisitions from small businesses.
- Sec. 4104. Contracting program for certain small business concerns.

Subtitle C—Miscellaneous Acquisition Laws

- Sec. 4151. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
- Sec. 4152. Restriction on use of noncompetitive procedures for procurement from a particular source.

TITLE V—ACQUISITION MANAGEMENT

Subtitle A—Armed Services Acquisitions

- Sec. 5001. Performance based management.
- Sec. 5002. Results oriented acquisition program cycle.
- Sec. 5003. Defense acquisition pilot program designations.

Subtitle B—Civilian Agency Acquisitions

- Sec. 5051. Performance based management.
- Sec. 5052. Results-oriented acquisition process.

Subtitle C—Miscellaneous

- Sec. 5091. Contractor exceptional performance awards.
- Sec. 5092. Department of Defense acquisition of intellectual property rights.

TITLE VI—STANDARDS OF CONDUCT

Subtitle A—Ethics Provisions

- Sec. 6001. Amendments to Office of Federal Procurement Policy Act.
- Sec. 6002. Amendments to title 18, United States Code.
- Sec. 6003. Repeal of superseded and obsolete laws.
- Sec. 6004. Implementation.

Subtitle B—Additional Amendments

- Sec. 6051. Contracting functions performed by Federal personnel.
- Sec. 6052. Repeal of executed requirement for study and report.
- Sec. 6053. Interests of Members of Congress.
- Sec. 6054. Waiting period for significant changes proposed for acquisition regulations.

Subtitle C—Whistleblower Protection

- Sec. 6101. Armed services procurements.
- Sec. 6102. Governmentwide whistleblower protections for contractor employees.

TITLE VII—DEFENSE TRADE AND COOPERATION

- Sec. 7001. Purchases of foreign goods.
- Sec. 7002. International cooperative agreements.
- Sec. 7003. Acquisition, cross-servicing agreements, and standardization.

TITLE VIII—COMMERCIAL ITEMS

- Sec. 8001. Definitions.
- Sec. 8002. Preference for acquisition of commercial items and nondevelopmental items.
- Sec. 8003. Acquisition of commercial items.
- Sec. 8004. Class waiver of applicability of certain laws.
- Sec. 8005. Inapplicability of certain provisions of law.
- Sec. 8006. Flexible deadlines for submission of offers of commercial items.
- Sec. 8007. Advocates for acquisition of commercial and nondevelopmental items.
- Sec. 8008. Provisions not affected.
- Sec. 8009. Comptroller General review of Federal Government use of market research.

TITLE IX—EFFECTIVE DATES AND IMPLEMENTATION

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- Sec. 9001. Effective dates.
- Sec. 9002. Implementing regulations.
- Sec. 9003. Evaluation by the Comptroller General.
- Sec. 9004. Data collection through the Federal procurement data system.

April 21, 1994 (7:17 p.m.)

1 **TITLE I—CONTRACT FORMATION**

2 **Subtitle A—Competition Statutes**

3 **PART I—ARMED SERVICES ACQUISITIONS**

4 **Subpart A—Competition Requirements**

5 **SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGU-**
 6 **LATION.**

7 Section 2304 of title 10, United States Code, is
 8 amended—

9 (1) in subsection (a)(1)(A), by striking out
 10 “modifications” and all that follows through “note)”
 11 and inserting in lieu thereof “Federal Acquisition
 12 Regulation”; and

13 (2) in subsection (g)(1), by striking out “regu-
 14 lations modified” and all that follows through
 15 “note)” and inserting in lieu thereof “Federal Ac-
 16 quisition Regulation”.

17 **SEC. 1002. EXCLUSION OF PARTICULAR SOURCES.**

18 Section 2304(b) of title 10, United States Code, is
 19 amended—

20 (1) in paragraph (1)—

21 (A) by striking out “or” at the end of sub-
 22 paragraph (B);

23 (B) by striking out the period at the end
 24 of subparagraph (C) and inserting in lieu there-
 25 of a semicolon; and

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1 (C) by adding at the end the following new
2 subparagraphs:

3 "(D) would ensure the continuous availability of
4 a reliable source of supply of such property or serv-
5 ice;

6 "(E) would satisfy projected needs for such
7 property or service determined on the basis of a his-
8 tory of high demand for the property or service; or

9 "(F) in the case of medical supplies, safety sup-
10 plies, or emergency supplies, would satisfy a critical
11 need for such supplies.";

12 (2) by redesignating paragraphs (2) and (3) as
13 paragraphs (3) and (4), respectively;

14 (3) by inserting after paragraph (1) the follow-
15 ing new paragraph (2):

16 "(2) The determination required of the agency head
17 in paragraph (1) may not be made for a class of purchases
18 or contracts."; and

19 (4) in paragraph (4), as redesignated by para-
20 graph (2), by striking out "paragraphs (1) and (2)"
21 and inserting in lieu thereof "paragraphs (1) and
22 (3)".

April 21, 1994 (4:22 p.m.)

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1 **SEC. 1003. APPROVAL FOR USE OF NONCOMPETITIVE PRO-**
 2 **CEDURES.**

3 Section 2304(f)(1)(B)(i) of title 10, United States
 4 Code, is amended by inserting before the semicolon at the
 5 end the following: "or by an official referred to in clause
 6 (ii), (iii), or (iv)".

7 **SEC. 1004. TASK ORDER CONTRACTS FOR ADVISORY AND**
 8 **ASSISTANCE SERVICES.**

9 (a) **AUTHORITY.—**

10 (1) **IN GENERAL.**—Chapter 137 of title 10,
 11 United States Code, is amended by inserting after
 12 section 2304 the following new section:

13 **"§2304a. Task order contracts for advisory and as-**
 14 **sistance services**

15 **"(a) AUTHORITY TO AWARD.**—(1) Subject to the re-
 16 quirements of this section, the head of an agency may
 17 enter into a contract for advisory and assistance services
 18 that does not procure or specify a firm quantity of services
 19 (other than a minimum or maximum quantity) and that
 20 provides for the issuance of task orders during the speci-
 21 fied period of the contract.

22 **"(2) Except as provided in subsection (h), the head**
 23 **of an agency may enter into a contract described in para-**
 24 **graph (1) only under the authority of this section.**

25 **"(b) LIMITATION ON CONTRACT PERIOD.**—The pe-
 26 riod of a contract referred to in subsection (a), including

April 21, 1994 (4:22 p.m.)

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1 all periods of extensions of the contract under options,
 2 modifications, or otherwise, may not exceed 5 years unless
 3 a longer period is specifically authorized in a law that is
 4 applicable to such contract.

5 “(c) CONTRACT PROCEDURES.—(1) The head of an
 6 agency may use procedures other than competitive proce-
 7 dures to enter into a contract referred to in subsection
 8 (a) only if an exception in subsection (e) of section 2304
 9 of this title applies to the contract and the use of such
 10 procedures is approved in accordance with subsection (f)
 11 of such section.

12 “(2) The notice required by section 18 of the Office
 13 of Federal Procurement Policy Act (41 U.S.C. 416) and
 14 section 8(e) of the Small Business Act (15 U.S.C. 637(e))
 15 shall reasonably and fairly describe the general scope,
 16 magnitude, and duration of the proposed contract in a
 17 manner that would reasonably enable a potential offeror
 18 to decide whether to request the solicitation and consider
 19 submitting an offer.

20 “(3) The solicitation shall include the following:

21 “(A) The period of the contract, including the
 22 number of options to extend the contract and the pe-
 23 riod for which the contract may be extended under
 24 each option, if any.

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1 “(B) The maximum quantity or dollar value of
2 services to be procured under the contract.

3 “(C) A statement of work, specifications, or
4 other description that reasonably describes the gen-
5 eral scope, nature, complexity, and purposes of the
6 services to be procured under the contract.

7 “(4)(A) The head of an agency may, on the basis of
8 one solicitation, award separate contracts under this sec-
9 tion for the same or similar services to two or more
10 sources if the solicitation states that the head of the agen-
11 cy has the option to do so.

12 “(B) If, in the case of a contract for advisory and
13 assistance services to be entered into under the authority
14 of this section, the contract period is to exceed 3 years
15 and the contract amount is estimated to exceed
16 \$10,000,000 (including all options), the solicitation
17 shall—

18 “(i) provide for a multiple award authorized
19 under subparagraph (A); and

20 “(ii) include a statement that the head of the
21 agency may also elect to award only one contract if
22 the head of the agency determines in writing that
23 only one of the offerers is capable of providing the
24 services required at the level of quality required.

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1 “(C) Subparagraph (B) does not apply in the case
2 of a solicitation for which the head of an agency deter-
3 mines in writing that, because the services required under
4 the contract are unique or highly specialized, it is not
5 practicable to award more than one contract.

6 “(5) A contract referred to in subsection (a) shall
7 contain the same information that is required by para-
8 graph (3) to be included in the solicitation of offers for
9 that contract.

10 “(d) ORDER PROCEDURES.—(1) The following ac-
11 tions are not required for a task order issued under a con-
12 tract entered into in accordance with this section:

13 “(A) A separate notice for such order under
14 section 18 of the Office of Federal Procurement Pol-
15 icy Act (41 U.S.C. 416) or section 8(e) of the Small
16 Business Act (15 U.S.C. 637(e)).

17 “(B) Except as provided in paragraph (2), a
18 competition (or a waiver of competition approved in
19 accordance with section 2304(f) of this title) that is
20 separate from that used for entering into the con-
21 tract.

22 “(2)(A) When multiple contracts are awarded pursu-
23 ant to subsection (c)(4), all contractors awarded such con-
24 tracts shall be provided a fair opportunity to be consid-
25 ered, pursuant to procedures set forth in the contracts,

1 for each task order in excess of \$2,500 that is to be issued
2 under any of the contracts unless—

3 “(i) the agency’s need for the services ordered
4 is of such unusual urgency that competition would
5 result in unacceptable delays in fulfilling the agen-
6 cy’s needs;

7 “(ii) only one such contractor is capable of pro-
8 viding the services required at the level of quality re-
9 quired because the services ordered are unique or so
10 highly specialized;

11 “(iii) the task order should be issued on a sole-
12 source basis in the interest of economy and effi-
13 ciency because it is a logical follow-on to a task
14 order already issued on a competitive basis; or

15 “(iv) the order must be placed with a particular
16 contractor in order to satisfy a minimum guarantee.

17 “(B) When a task order is issued in accordance with
18 subparagraph (A), the order shall include a statement of
19 work that clearly specifies all tasks to be performed under
20 the order.

21 “(3) A protest is not authorized in connection with
22 the issuance or proposed issuance of a task order except
23 for a protest on the ground that the order increases the
24 scope, period, or maximum value of the contract under
25 which the order is issued.

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1 “(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM
2 VALUE OF CONTRACT.—(1) A task order may not increase
3 the scope, period, or maximum value of the contract under
4 which the order is issued. The scope, period, or maximum
5 value of the contract may be increased only by modifica-
6 tion of the contract.

7 “(2) Unless use of procedures other than competitive
8 procedures is authorized by an exception in subsection (c)
9 of section 2304 of this title and approved in accordance
10 with subsection (f) of such section, competitive procedures
11 shall be used for making such a modification.

12 “(3) Notice regarding the modification shall be pro-
13 vided in accordance with section 18 of the Office of Fed-
14 eral Procurement Policy Act (41 U.S.C. 416) and section
15 8(e) of the Small Business Act (15 U.S.C. 637(e)).

16 “(4)(A) Notwithstanding the limitation on the con-
17 tract period set forth in subsection (b) or in a solicitation
18 or contract pursuant to subsection (c), a contract entered
19 into by the head of an agency under this section may be
20 extended on a sole-source basis for a period not exceeding
21 6 months if the agency head determines that—

22 “(i) the award of a follow-on contract has been
23 delayed by circumstances that were not reasonably
24 foreseeable at the time the initial contract was en-
25 tered into; and

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1 “(ii) the extension is necessary in order to en-
2 sure continuity of the receipt of services pending the
3 award of, and commencement of performance under,
4 the follow-on contract.

5 “(B) A contract may be extended under the authority
6 of subparagraph (A) only once and only in accordance
7 with the limitations and requirements of this subsection.

8 “(f) TASK ORDER OMBUDSMAN.—Each head of an
9 agency who awards multiple contracts pursuant to sub-
10 section (c)(4) shall appoint or designate a task order om-
11 budsman who shall be responsible for reviewing complaints
12 from the contractors on such contracts and ensuring that
13 all of the contractors are afforded a fair opportunity to
14 be considered for task orders when required under sub-
15 section (d)(2). The task order ombudsman shall be a sen-
16 ior agency official who is independent of the contracting
17 officer for the contracts and may be the agency’s competi-
18 tion advocate.

19 “(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—
20 This section does not apply to a contract for the acquisi-
21 tion of property or services that includes acquisition of ad-
22 visory and assistance services if the head of an agency en-
23 tering into such contract determines that, under the con-
24 tract, advisory and assistance services are necessarily inci-
25 dent to, and not a significant component of, the contract.

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1 “(h) RELATIONSHIP TO OTHER CONTRACTING AU-
 2 THORITY.—Nothing in this section may be construed to
 3 limit the authority of the head of an agency to enter into
 4 single or multiple task order contracts, or single or mul-
 5 tiple delivery order contracts, for property or services
 6 (other than advisory and assistance services) under other
 7 provisions of this chapter or under any other provision of
 8 law.

9 “(i) ADVISORY AND ASSISTANCE SERVICES DE-
 10 FINED.—In this section, the term ‘advisory and assistance
 11 services’ has the meaning given such term in section
 12 1105(g) of title 31.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
 14 tions at the beginning of such chapter is amended
 15 by inserting after the item relating to section 2304
 16 the following new item:

“2304a. Task order contracts for advisory and assistance services.”.

17 (b) REPEAL OF SUPERSEDED PROVISION.—Section
 18 2304 of title 10, United States Code, is amended by strik-
 19 ing out subsection (j).

20 (c) CONFORMING AMENDMENT FOR PROFESSIONAL
 21 AND TECHNICAL SERVICES.—Section 2331 of title 10,
 22 United States Code, is amended by striking out subsection
 23 (c).

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1 **SEC. 1006. ACQUISITION OF EXPERT SERVICES.**

2 Section 2304(c)(3) of title 10, United States Code,
3 is amended—

4 (1) by striking out “or (B)” and inserting in
5 lieu thereof “(B)”; and

6 (2) by inserting before the semicolon at the end
7 the following: “, or (C) to procure the services of an
8 expert for use, in any litigation or dispute (including
9 any reasonably foreseeable litigation or dispute) in-
10 volving the Federal Government, in any trial, hear-
11 ing, or proceeding before any court, administrative
12 tribunal, or agency, or in any part of an alternative
13 dispute resolution process, whether or not the expert
14 is expected to testify”.

15 **Subpart B—Planning, Solicitation, Evaluation, and**
16 **Award**

17 **SEC. 1011. SOURCE SELECTION FACTORS.**

18 Section 2305(a) of title 10, United States Code, is
19 amended—

20 (1) in paragraph (2)—

21 (A) in subparagraph (A)(i), by striking out
22 “nonprice-related factors)” and inserting in lieu
23 thereof “nonprice-related factors and
24 subfactors)”;

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1 (B) in subparagraph (B)(ii), by striking
 2 out subclause (I) and inserting in lieu thereof
 3 the following:

4 “(I) either a statement that the pro-
 5 posals are intended to be evaluated with,
 6 and award made after, discussions with the
 7 offerors, or a statement that the proposals
 8 are intended to be evaluated, and award
 9 made, without discussions with the offerors
 10 (other than discussions conducted for the
 11 purpose of minor clarification) unless dis-
 12 cussions are determined to be necessary;
 13 and”; and

14 (2) by striking out paragraph (3) and inserting
 15 in lieu thereof the following:

16 “(3)(A) In prescribing the evaluation factors to be
 17 included in each solicitation for competitive proposals, the
 18 head of an agency—

19 “(i) shall clearly establish the relative impor-
 20 tance assigned to the evaluation factors and
 21 subfactors, including the quality of the product or
 22 services to be provided (including technical capabil-
 23 ity, management capability, prior experience, and
 24 past performance of the offeror);

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1 (b) **COMPETITIVE PROPOSALS PROCEDURES.**—Sec-
 2 tion 2305(b)(4)(B) of title 10, United States Code, is
 3 amended in the second sentence by striking out “source
 4 and shall promptly notify” and inserting in lieu thereof
 5 “source. As soon as practicable after the date of contract
 6 award, the head of the agency shall, in accordance with
 7 procedures prescribed in the Federal Acquisition Regula-
 8 tion, notify”.

9 **SEC. 1014. POST-AWARD DEBRIEFINGS.**

10 Section 2305(b) of title 10, United States Code, is
 11 amended—

12 (1) by redesignating paragraph (5) as para-
 13 graph (6); and

14 (2) by inserting after paragraph (4) the follow-
 15 ing new paragraph (5):

16 “(5)(A) When a contract is awarded by the head of
 17 an agency on the basis of competitive proposals, an unsuc-
 18 cessful offeror, upon written request received by the agen-
 19 cy within 3 days after the date on which the unsuccessful
 20 offeror receives the notification of the contract award,
 21 shall be debriefed and furnished the basis for the selection
 22 decision and contract award. An employee of the agency
 23 shall debrief the offeror promptly after receipt of the re-
 24 quest by the agency.

25 “(B) The debriefing shall include, at a minimum—

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1 “(i) the agency’s evaluation of the significant
2 weak or deficient factors in the offeror’s offer;

3 “(ii) the overall evaluated cost and technical
4 rating of the offer of the contractor awarded the
5 contract and the overall evaluated cost and technical
6 rating of the offer of the debriefed offeror;

7 “(iii) the overall ranking of all offers;

8 “(iv) a summary of the rationale for the award;

9 “(v) in the case of a proposal that incorporates
10 equipment that is a commercial item, the make and
11 model of the item incorporated in the offer of the
12 contractor awarded the contract; and

13 “(vi) reasonable responses to questions posed by
14 the debriefed offeror as to whether source selection
15 procedures set forth in the solicitation, applicable
16 regulations, and other applicable authorities were
17 followed by the agency.

18 “(C) The debriefing may not include point-by-point
19 comparisons of the debriefed offeror’s offer with other of-
20 fers and may not disclose any information that is exempt
21 from disclosure under section 552 of title 5, including in-
22 formation relating to—

23 “(i) trade secrets;

24 “(ii) privileged or confidential manufacturing
25 processes and techniques; and

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1 (b) COMPETITIVE PROPOSALS PROCEDURES.—Sec-
 2 tion 2305(b)(4)(B) of title 10, United States Code, is
 3 amended in the second sentence by striking out “source
 4 and shall promptly notify” and inserting in lieu thereof
 5 “source. As soon as practicable after the date of contract
 6 award, the head of the agency shall, in accordance with
 7 procedures prescribed in the Federal Acquisition Regula-
 8 tion, notify”.

9 SEC. 1014. POST-AWARD DEBRIEFING.

10 Section 2305(b) of title 10, United States Code, is
 11 amended—

12 (1) by redesignating paragraph (5) as para-
 13 graph (6); and

14 (2) by inserting after paragraph (4) the follow-
 15 ing new paragraph (5):

16 “(5)(A) When a contract is awarded by the head of
 17 an agency on the basis of competitive proposals, an unsuc-
 18 cessful offeror, upon written request received by the agen-
 19 cy within 3 days after the date on which the unsuccessful
 20 offeror receives the notification of the contract award,
 21 shall be debriefed and furnished the basis for the selection
 22 decision and contract award. An employee of the agency
 23 shall debrief the offeror promptly after receipt of the re-
 24 quest by the agency.

25 “(B) The debriefing shall include, at a minimum—

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1 “(i) the agency’s evaluation of the significant
2 weak or deficient factors in the offeror’s offer;

3 “(ii) the overall evaluated cost and technical
4 rating of the offer of the contractor awarded the
5 contract and the overall evaluated cost and technical
6 rating of the offer of the debriefed offeror;

7 “(iii) the overall ranking of all offers;

8 “(iv) a summary of the rationale for the award;

9 “(v) in the case of a proposal that incorporates
10 equipment that is a commercial item, the make and
11 model of the item incorporated in the offer of the
12 contractor awarded the contract; and

13 “(vi) reasonable responses to questions posed by
14 the debriefed offeror as to whether source selection
15 procedures set forth in the solicitation, applicable
16 regulations, and other applicable authorities were
17 followed by the agency.

18 “(C) The debriefing may not include point-by-point
19 comparisons of the debriefed offeror’s offer with other of-
20 fers and may not disclose any information that is exempt
21 from disclosure under section 552 of title 5, including in-
22 formation relating to—

23 “(i) trade secrets;

24 “(ii) privileged or confidential manufacturing
25 processes and techniques; and

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1 “(iii) commercial and financial information that
2 is privileged or confidential, including cost break-
3 downs, profit, indirect cost rates, and similar infor-
4 mation.

5 “(D) Each solicitation for competitive proposals shall
6 include a statement that information described in subpara-
7 graph (B) may be disclosed in post-award debriefings.

8 “(E) If, within one year after the date of the contract
9 award and as a result of a successful procurement protest
10 or otherwise, the agency seeks to fulfill the requirement
11 under the contract either on the basis of a new solicitation
12 of offers or on the basis of new best and final offers re-
13 quested for that contract, the agency shall make available
14 to all offerors—

15 “(i) the information provided in debriefings
16 under this paragraph regarding the offer of the con-
17 tractor awarded the contract; and

18 “(ii) the comparable debriefing information that
19 was prepared with respect to the original offerors.

20 “(F) The contracting officer shall include a summary
21 of the debriefing in the contract file.”.

22 **SEC. 1015. PROTEST FILE.**

23 Section 2305 of title 10, United States Code, is
24 amended by adding at the end the following:

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1 “(e)(1) If, in the case of a solicitation for a contract
 2 issued by, or an award or proposed award of a contract
 3 by, the head of an agency, a protest is filed pursuant to
 4 the procedures in subchapter V of chapter 35 of title 31
 5 and an actual or prospective offeror so requests, a file of
 6 the protest shall be established by the procuring activity
 7 and reasonable access shall be provided to actual or pro-
 8 spective offerors.

9 “(2) Information exempt from disclosure under the
 10 section 552 of title 5 may be redacted in a file established
 11 pursuant to paragraph (1) unless an applicable protective
 12 order provides otherwise.

13 “(3) Regulations implementing this subsection shall
 14 be consistent with the regulations regarding the prepara-
 15 tion and submission of an agency's protest file (the so-
 16 called 'rule 4 file') for protests to the General Services
 17 Board of Contract Appeals under section 111 of the Fed-
 18 eral Property and Administrative Services Act of 1949 (41
 19 U.S.C. 759).”.

20 **SEC. 1016. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
 21 **MENT OF PROTESTS.**

22 Section 2305 of title 10, United States Code, as
 23 amended by section 1015, is further amended by adding
 24 at the end the following new subsection:

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1 “(f) If, in connection with a protest, the head of an
 2 agency determines that a solicitation, proposed award, or
 3 award does not comply with the requirements of law or
 4 regulation, the head of the agency may take—

5 “(1) any action set out in subparagraphs (A)
 6 through (F) of subsection (b)(1) of section 3554 of
 7 title 31; and

8 “(2) may pay costs described in paragraph (1)
 9 of section 3554(c) of title 31 within the limits re-
 10 ferred to in paragraph (2) of such section.”.

11 **SEC. 1017. TWO-PHASE SELECTION PROCEDURES.**

12 (a) **PROCEDURES AUTHORIZED.**—Chapter 137 of
 13 title 10, United States Code, is amended by inserting after
 14 section 2305 the following new section:

15 **“§ 2305a. Two-phase selection procedures**

16 “(a) **PROCEDURES AUTHORIZED.**—The head of an
 17 agency may use two-phase selection procedures for enter-
 18 ing into a contract for the acquisition of property or serv-
 19 ices when the head of the agency determines that three
 20 or more offers will be received for such contract, substan-
 21 tial design work must be performed before an offeror can
 22 develop a price or cost proposal for such contract, and the
 23 offerors will incur a substantial amount of expenses in pre-
 24 paring the offers.

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1 “(b) PROCEDURES DESCRIBED.—Two-phase selec-
2 tion procedures consist of the following:

3 “(1) The head of the agency issues a solicita-
4 tion for proposals that—

5 “(A) provide information on technical ap-
6 proach and the offeror’s technical qualifications;
7 and

8 “(B) do not include detailed design infor-
9 mation or cost or price information.

10 “(2) The head of the agency evaluates the pro-
11 posals on the basis of evaluation criteria set forth in
12 the solicitation, except that the head of the agency
13 does not consider cost-related or price-related eval-
14 uation factors.

15 “(3) The head of the agency selects at least
16 three offerors as the most highly qualified to provide
17 the property or services under the contract and re-
18 quests the selected offerors to submit competitive
19 proposals that include cost or price information.

20 “(4) The head of the agency awards the con-
21 tract in accordance with section 2305(b)(4) of this
22 title.

23 “(c) RESOURCE COMPARISON CRITERION RE-
24 QUIRED.—In using two-phase selection procedures for en-
25 tering into a contract, the head of the agency shall estab-

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lish a resource criterion or a financial criterion applicable to the contract in order to provide a consistent basis for comparing the offerors and their proposals.

“(d) **TWO-PHASE SELECTION PROCEDURES DEFINED.**—In this section, the term ‘two-phase selection procedures’ means procedures described in subsection (b) that are used for the selection of a contractor on the basis of cost or price and other evaluation criteria to provide property or services in accordance with the provisions of a contract which requires the contractor to design the property to be acquired under the contract and produce or construct such property.

“(e) **APPLICABILITY ONLY TO DEPARTMENT OF DEFENSE.**—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2305 the following:

“2305a. Two-phase selection procedures.”.

Subpart C—Kinds of Contracts

SEC. 1021. SECRETARIAL DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Subsection (c) of section 2306 of title 10, United States Code, is repealed.

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1 SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.

2 (a). REPEAL OF UNNECESSARY CROSS REF-
 3 ERENCE.—Subsection (f) of section 2306 of title 10, Unit-
 4 ed States Code, is repealed.

5 (b) CONFORMING AMENDMENT.—Such section is
 6 amended by redesignating subsections (d), (e), (g), and
 7 (h) as subsections (c), (d), (e), and (f), respectively.

8 (c) NEUTERIZATION OF REFERENCE.—Subsection
 9 (e)(1) of such section, as redesignated by subsection (b),
 10 is amended in the matter above clause (i) by striking out
 11 “whenever he finds” and inserting in lieu thereof “when-
 12 ever the head of the agency finds”.

13 **Subpart D—Miscellaneous Provisions for the**
 14 **Encouragement of Competition**

15 **SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
 16 **PORT BY ADVOCATES FOR COMPETITION.**

17 Subsection (c) of section 2318 of title 10, United
 18 States Code, is repealed.

19 PART II—CIVILIAN AGENCY ACQUISITIONS**20 Subpart A—Competition Requirements**

21 **SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGU-**
 22 **LATION.**

23 Section 303 of the Federal Property and Administra-
 24 tive Services Act of 1949 (41 U.S.C. 253) is amended—

25 (1) in subsection (a)(1)(A), by striking out
 26 “modifications” and all that follows through “of

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1 1984" and inserting in lieu thereof "Federal Acqui-
 2 sition Regulation"; and

3 (2) in subsection (g)(1), by striking out "regu-
 4 lations modified" and all that follows through "of
 5 1984," and inserting in lieu thereof "Federal Acqui-
 6 sition Regulation".

7 **SEC. 1062. EXCLUSION OF PARTICULAR SOURCES.**

8 Section 303(b) of the Federal Property and Adminis-
 9 trative Services Act of 1949 (41 U.S.C. 253(b)) is
 10 amended—

11 (1) in paragraph (1)—

12 (A) by striking out "or" at the end of sub-
 13 paragraph (B);

14 (B) by striking out the period at the end
 15 of subparagraph (C) and inserting in lieu there-
 16 of a semicolon; and

17 (C) by adding at the end the following new
 18 subparagraphs:

19 "(D) would ensure the continuous availability of
 20 a reliable source of supply of such property or serv-
 21 ice;

22 "(E) would satisfy projected needs for such
 23 property or service determined on the basis of a his-
 24 tory of high demand for the property or service; or

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1 “(F) in the case of medical supplies, safety sup-
2 plies, or emergency supplies, would satisfy a critical
3 need for such supplies.”;

4 (2) by redesignating paragraphs (2) and (3) as
5 paragraphs (3) and (4), respectively;

6 (3) by inserting after paragraph (1) the follow-
7 ing new paragraph (2):

8 “(2) The determination required of the agency head
9 in paragraph (1) may not be made for a class of purchases
10 or contracts.”; and

11 (4) in paragraph (4), as redesignated by para-
12 graph (2), by striking out “paragraphs (1) and (2)”
13 and inserting in lieu thereof “paragraphs (1) and
14 (3)”.

15 **SEC. 1053. APPROVAL FOR USE OF NONCOMPETITIVE PRO-**
16 **CEDURES.**

17 Section 303(f)(1)(B)(i) of the Federal Property and
18 Administrative Services Act of 1949 (41 U.S.C.
19 253(f)(1)(B)(i)) is amended by inserting before the semi-
20 colon at the end the following: “or by an official referred
21 to in clause (ii), (iii), or (iv)”.

22 **SEC. 1064. TASK ORDER CONTRACTS FOR ADVISORY AND**
23 **ASSISTANCE SERVICES.**

24 (a) **AUTHORITY.**—Title III of the Federal Property
25 and Administrative Services Act of 1949 (41 U.S.C. 251

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1 et seq.) is amended by inserting after section 303G the
 2 following new section:

3 "TASK ORDER CONTRACTS FOR ADVISORY AND
 4 ASSISTANCE SERVICES

5 "SEC. 303H. (a) AUTHORITY TO AWARD.—(1) Sub-
 6 ject to the requirements of this section, the head of an
 7 executive agency may enter into a contract for advisory
 8 and assistance services that does not procure or specify
 9 a firm quantity of services (other than a minimum or max-
 10 imum quantity) and that provides for the issuance of task
 11 orders during the specified period of the contract.

12 "(2) Except as provided in subsection (h), the agency
 13 head may enter into a contract described in paragraph (1)
 14 only under the authority of this section.

15 "(b) LIMITATION ON CONTRACT PERIOD.—The pe-
 16 riod of a contract referred to in subsection (a), including
 17 all periods of extensions of the contract under options,
 18 modifications, or otherwise, may not exceed 5 years unless
 19 a longer period is specifically authorized in a law that is
 20 applicable to such contract.

21 "(c) CONTRACT PROCEDURES.—(1) An agency head
 22 may use procedures other than competitive procedures to
 23 enter into a contract referred to in subsection (a) only if
 24 an exception in subsection (c) of section 303 applies to
 25 the contract and the use of such procedures is approved
 26 in accordance with subsection (f) of such section.

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1 “(2) The notice required by section 18 of the Office
2 of Federal Procurement Policy Act (41 U.S.C. 416) and
3 section 8(e) of the Small Business Act (15 U.S.C. 637(e))
4 shall reasonably and fairly describe the general scope,
5 magnitude, and duration of the proposed contract in a
6 manner that would reasonably enable a potential offeror
7 to decide whether to request the solicitation and consider
8 submitting an offer.

9 “(3) The solicitation shall include the following:

10 “(A) The period of the contract, including the
11 number of options to extend the contract and the pe-
12 riod for which the contract may be extended under
13 each option, if any.

14 “(B) The maximum quantity or dollar value of
15 the services to be procured under the contract.

16 “(C) A statement of work, specifications, or
17 other description that reasonably describes the gen-
18 eral scope, nature, complexity, and purposes of the
19 services to be procured under the contract.

20 “(4)(A) An agency head may, on the basis of one so-
21 licitation, award separate contracts under this section for
22 the same or similar services to two or more sources if the
23 solicitation states that the agency head has the option to
24 do so.

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1 “(B) If, in the case of a contract for advisory and
 2 assistance services to be entered into under the authority
 3 of this section, the contract period is to exceed 3 years
 4 and the contract amount is estimated to exceed
 5 \$10,000,000 (including all options), the solicitation
 6 shall—

7 “(i) provide for a multiple award authorized
 8 under subparagraph (A); and

9 “(ii) include a statement that the agency head
 10 may also elect to award only one contract if the
 11 agency head determines in writing that only one of
 12 the offerers is capable of providing the services re-
 13 quired at the level of quality required.

14 “(C) Subparagraph (B) does not apply in the case
 15 of a solicitation for which the agency head determines in
 16 writing that, because the services required under the con-
 17 tract are unique or highly specialized, it is not practicable
 18 to award more than one contract.

19 “(5) A contract referred to in subsection (a) shall
 20 contain the same information that is required by para-
 21 graph (3) to be included in the solicitation of offers for
 22 that contract.

23 “(d) ORDER PROCEDURES.—(1) The following ac-
 24 tions are not required for a task order issued under a con-
 25 tract entered into in accordance with this section:

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1 “(A) A separate notice for such order under
2 section 18 of the Office of Federal Procurement Pol-
3 icy Act (41 U.S.C. 416) or section 8(e) of the Small
4 Business Act (15 U.S.C. 637(e)).

5 “(B) Except as provided in paragraph (2), a
6 competition (or a waiver of competition approved in
7 accordance with section 303(f)) that is separate
8 from that used for entering into the contract.

9 “(2)(A) When multiple contracts are awarded pursu-
10 ant to subsection (c)(4), all contractors awarded such con-
11 tracts shall be provided a fair opportunity to be consid-
12 ered, pursuant to procedures set forth in the contracts,
13 for each task order in excess of \$2,500 that is to be issued
14 under any of the contracts unless—

15 “(i) the agency’s need for the services ordered
16 is of such unusual urgency that competition would
17 result in unacceptable delays in fulfilling the agen-
18 cy’s needs;

19 “(ii) only one such contractor is capable of pro-
20 viding the services required at the level of quality re-
21 quired because the services ordered are unique or
22 highly specialized;

23 “(iii) the task order should be issued on a sole-
24 source basis in the interest of economy and effi-

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1 ciency because it is a logical follow-on to a task
2 order already issued on a competitive basis; or

3 “(iv) the order must be placed with a particular
4 contractor in order to satisfy a minimum guarantee.

5 “(B) When a task order is issued in accordance with
6 subparagraph (A), the order shall include a statement of
7 work that clearly specifies all tasks to be performed under
8 the order.

9 “(3) A protest is not authorized in connection with
10 the issuance or proposed issuance of a task order except
11 for a protest on the ground that the order increases the
12 scope, period, or maximum value of the contract under
13 which the order is issued.

14 “(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM
15 VALUE OF CONTRACT.—(1) A task order may not increase
16 the scope, period, or maximum value of the contract under
17 which the order is issued. The scope, period, or maximum
18 value of the contract may be increased only by modifica-
19 tion of the contract.

20 “(2) Unless use of procedures other than competitive
21 procedures is authorized by an exception in subsection (c)
22 of section 303 and approved in accordance with subsection
23 (f) of such section, competitive procedures shall be used
24 for making such a modification.

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1 “(3) Notice regarding the modification shall be pro-
2 vided in accordance with section 18 of the Office of Fed-
3 eral Procurement Policy Act (41 U.S.C. 416) and section
4 8(e) of the Small Business Act (15 U.S.C. 637(e)).

5 “(4)(A) Notwithstanding the limitation on the con-
6 tract period set forth in subsection (b) or in a solicitation
7 or contract pursuant to subsection (c), a contract entered
8 into by the head of an agency under this section may be
9 extended on a sole-source basis for a period not exceeding
10 6 months if the agency head determines that—

11 “(i) the award of a follow-on contract has been
12 delayed by circumstances that were not reasonably
13 foreseeable at the time the initial contract was en-
14 tered into; and

15 “(ii) the extension is necessary in order to en-
16 sure continuity of the receipt of services pending the
17 award of, and commencement of performance under,
18 the follow-on contract.

19 “(B) A contract may be extended under the authority
20 of subparagraph (A) only once and only in accordance
21 with the limitations and requirements of this subsection.

22 “(f) TASK ORDER OMBUDSMAN.—Each agency head
23 who awards multiple contracts pursuant to subsection
24 (c)(4) shall appoint or designate a task order ombudsman
25 who shall be responsible for reviewing complaints from the

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1 contractors on such contracts and ensuring that all of the
2 contractors are afforded a fair opportunity to be consid-
3 ered for task orders when required under subsection
4 (d)(2). The task order ombudsman shall be a senior agen-
5 cy official who is independent of the contracting officer
6 for the contracts and may be the agency's competition ad-
7 vocate.

8 “(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—
9 This section does not apply to a contract for the acquisi-
10 tion of property or services that includes acquisition of ad-
11 visory and assistance services if the agency head entering
12 into such contract determines that, under the contract, ad-
13 visory and assistance services are necessarily incident to,
14 and not a significant component of, the contract.

15 “(h) RELATIONSHIP TO OTHER CONTRACTING AU-
16 THORITY.—Nothing in this section may be construed to
17 limit the authority of the head of an agency to enter into
18 single or multiple task order contracts, or single or mul-
19 tiple delivery order contracts, for goods or services (other
20 than advisory and assistance services) under other provi-
21 sions of this title or under any other provision of law.

22 “(i) ADVISORY AND ASSISTANCE SERVICES DE-
23 FINED.—In this section, the term ‘advisory and assistance
24 services’ has the meaning given such term in section
25 1105(g) of title 31, United States Code.”.

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1 (b) CLERICAL AMENDMENT.—The table of contents
 2 in the first section is amended by inserting after the item
 3 relating to section 303G the following new item:

"Sec. 303H. Task order contracts for advisory and assistance services."

4 **SEC. 1055. ACQUISITION OF EXPERT SERVICES.**

5 (a) EXCEPTION TO REQUIREMENT FOR USE OF COM-
 6 PETITIVE PROCEDURES.—Section 303(c)(3) of the Fed-
 7 eral Property and Administrative Services Act of 1949 (41
 8 U.S.C. 253(c)) is amended—

9 (1) by striking out "or (B)" and inserting in
 10 lieu thereof "(B)"; and

11 (2) by inserting before the semicolon at the end
 12 the following: ", or (C) to procure the services of an
 13 expert for use, in any litigation or dispute (including
 14 any reasonably foreseeable litigation or dispute) in-
 15 volving the Federal Government, in any trial hear-
 16 ing, or proceeding before any court, administrative
 17 tribunal, or agency, or in any part of an alternative
 18 dispute resolution process, whether or not the expert
 19 is expected to testify".

20 (b) PROCUREMENT NOTICE.—

21 (1) AMENDMENT OF OFFICE OF FEDERAL PRO-
 22 CUREMENT POLICY ACT.—Section 18(c) of the Office
 23 of Federal Procurement Policy Act (41 U.S.C.
 24 416(c)) is amended—

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1 (A) by striking out "or" at the end of sub-
2 paragraph (D);

3 (B) by striking out the period at the end
4 of subparagraph (E) and inserting in lieu there-
5 of "; or"; and

6 (C) by adding at the end the following:

7 "(F) the procurement is for the services of an
8 expert for use in any litigation or dispute (including
9 any reasonably foreseeable litigation or dispute) in-
10 volving the Federal Government in any trial, hear-
11 ing, or proceeding before any court, administrative
12 tribunal, or agency, or in any part of an alternative
13 dispute resolution process, whether or not the expert
14 is expected to testify."

15 (2) ~~AMENDMENT OF SMALL BUSINESS ACT.~~—
16 Section 8(g) of the Small Business Act (15 U.S.C.
17 637(c)) is amended—

18 (A) by striking out "or" at the end of sub-
19 paragraph (D);

20 (B) by striking out the period at the end
21 of subparagraph (E) and inserting in lieu there-
22 of "; or"; and

23 (C) by adding at the end the following:

24 "(F) the procurement is for the services of an
25 expert for use in any litigation or dispute (including

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1 preparation for any foreseeable litigation or dispute)
 2 that involves or could involve the Federal Govern-
 3 ment in any trial, hearing, or proceeding before any
 4 court, administrative tribunal, or agency, or in any
 5 part of an alternative dispute resolution process,
 6 whether or not the expert is expected to testify.”.

7 (c) **REPEAL OF AMENDMENTS TO UNCODIFIED**
 8 **TITLE.**—The following provisions of law are repealed:

9 (1) Section 532 of Public Law 101-509 (104
 10 Stat. 1470) and the provision of law set out in
 11 quotes in that section.

12 (2) Section 529 of Public Law 102-393 (106
 13 Stat. 1761) and the matters inserted and added by
 14 that section.

15 **SEC. 1054. CONTINUED OCCUPANCY OF LEASED SPACE.**

16 Section 303(d) of the Federal Property and Adminis-
 17 trative Services Act of 1949 (41 U.S.C. 253(d)) is
 18 amended—

19 (1) by redesignating paragraph (2) as para-
 20 graph (3); and

21 (2) by inserting after paragraph (1) the follow-
 22 ing new paragraph (2):

23 “(2)(A) For the purposes of applying subsection
 24 (c)(1) in the case of a follow-on lease to be entered into
 25 for the purpose of providing for continued occupancy of

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1 particular space in leased real property by a Federal agen-
2 cy, space may be treated as being available only from the
3 lessor of such space and may be acquired through the use
4 of procedures other than competitive procedures (without
5 the justification otherwise required by subsection (f)) if
6 a written determination is made by the contracting officer
7 that—

8 “(i) the occupying agency has a continuing need
9 for the space;

10 “(ii) the space meets the needs of the agency;
11 and

12 “(iii) the lessor is willing to continue to provide
13 the space at a fair market price determined by the
14 contracting officer on the basis of a market survey
15 or an appraisal conducted in accordance with gen-
16 erally accepted real property appraisal standards.

17 “(B) The authority under subparagraph (A) to use
18 procedures other than competitive procedures to enter into
19 a follow-on lease may be exercised not more than once to
20 provide for continued occupancy of particular space in real
21 property by a particular Federal agency. The period of
22 such follow-on lease may not exceed 5 years.

23 “(C) Nothing in this paragraph may be construed to
24 prohibit the use of procedures other than competitive pro-
25 cedures to enter into a follow-on lease of real property for

1 continued occupancy of particular space in real property
 2 by a Federal agency when an exception set forth in sub-
 3 section (c) applies and the use of such procedures is justi-
 4 fied and approved in accordance with subsection (f)."

5 **Subpart B—Planning, Solicitation, Evaluation, and**
 6 **Award**

7 **SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.**

8 (a) **CONTENT OF SOLICITATION.**—Section 303A of
 9 the Federal Property and Administrative Services Act of
 10 1949 (41 U.S.C. 253a) is amended—

11 (1) in subsection (b)(1)(A)—

12 (A) by inserting "and significant
 13 subfactors" after "all significant factors"; and

14 (B) by striking out "(including price)" and
 15 inserting "(including cost or price, cost-related
 16 or price-related factors and subfactors, and
 17 noncost-related or nonprice-related factors and
 18 subfactors)";

19 (2) in subsection (b)(1)(B), by inserting "and
 20 subfactors" after "factors";

21 (3) in subsection (b)(2)(B), by striking out
 22 clause (i) and inserting in lieu thereof the following:

23 "(i) either a statement that the pro-
 24 posals are intended to be evaluated with,
 25 and award made after, discussions with the

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1 offerors, or a statement that the proposals
 2 are intended to be evaluated, and award
 3 made, without discussions with the offerors
 4 (other than discussions conducted for the
 5 purpose of minor clarification) unless dis-
 6 cussions are determined to be necessary;
 7 and"; and

8 (4) by adding at the end the following new sub-
 9 section:

10 "(c)(1) In prescribing the evaluation factors to be in-
 11 cluded in each solicitation for competitive proposals, an
 12 agency head—

13 "(A) shall clearly establish the relative impor-
 14 tance assigned to the evaluation factors and
 15 subfactors, including the quality of the product or
 16 services to be provided (including technical capabil-
 17 ity, management capability, prior experience, and
 18 past performance of the offeror);

19 "(B) shall include cost or price to the Govern-
 20 ment as an evaluation factor that must be consid-
 21 ered in the evaluation of proposals; and

22 "(C) shall disclose to offerors whether all eval-
 23 uation factors other than cost or price, when com-
 24 bined, are—

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1 “(i) significantly more important than cost
2 or price;

3 “(ii) approximately equal in importance to
4 cost or price; or

5 “(iii) significantly less important than cost
6 or price.

7 “(2) Nothing in this subsection prohibits an agency
8 from—

9 “(A) providing additional information in a solic-
10 itation, including numeric weights for all evaluation
11 factors; or

12 “(B) stating in a solicitation that award will be
13 made to the offeror that meets the solicitation’s
14 mandatory requirements at the lowest price or
15 cost.”.

16 (b) EVALUATION AND AWARD.—Section 303B of the
17 Federal Property and Administrative Services Act of 1949
18 (41 U.S.C. 253b) is amended—

19 (1) in subsection (a), by inserting “, and award
20 a contract,” after “competitive proposals”;

21 (2) in subsection (c), by inserting “in accord-
22 ance with subsection (a)” in the second sentence
23 after “shall evaluate the bids”; and

24 (3) in subsection (d)—

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1 (A) by striking out paragraph (1) and in-
2 serting in lieu thereof the following:

3 "(1) An agency head shall evaluate competitive pro-
4 posals in accordance with subsection (a) and may award
5 a contract—

6 "(A) after discussions with the offerors, pro-
7 vided that written or oral discussions have been con-
8 ducted with all responsible offerors who submit pro-
9 posals within the competitive range; or

10 "(B) based on the proposals received and with-
11 out discussions with the offerors (other than discus-
12 sions conducted for the purpose of minor clarifica-
13 tion), provided that, as required by section
14 303A(b)(2)(B)(i), the solicitation included a state-
15 ment that proposals are intended to be evaluated,
16 and award made, without discussions, unless discus-
17 sions are determined to be necessary.";

18 (B) by striking out paragraphs (2) and (3)
19 and by redesignating paragraph (4) as para-
20 graph (2); and

21 (C) in paragraph (2), as redesignated by
22 subparagraph (B), by inserting "cost or" before
23 "price" in the first sentence.

24 (c) APPLICABILITY.—

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1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall apply to—

4 (A) solicitations for sealed bids or competi-
 5 tive proposals issued after the end of the 180-
 6 day period beginning on the date of the enact-
 7 ment of this Act; and

8 (B) contracts awarded pursuant to those
 9 solicitations.

10 (2) AUTHORITY TO APPLY AMENDMENTS
 11 EARLY.—The head of an executive agency may apply
 12 the amendments made by this section to solicitations
 13 issued before the end of the period referred to in
 14 paragraph (1). The head of the executive agency
 15 shall publish in the Federal Register notice of any
 16 such earlier date of application at least 10 days be-
 17 fore that date.

18 **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**
 19 **TION OF PURCHASE OPTIONS.**

20 Section 303A of the Federal Property and Adminis-
 21 trative Services Act of 1949 (41 U.S.C. 253a), as amend-
 22 ed by section 1061(a)(4), is further amended by adding
 23 at the end the following new subsection:

24 “(d) An agency head, in issuing a solicitation for a
 25 contract to be awarded using sealed bid procedures, may

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1 not include in such solicitation a clause providing for the
2 evaluation of prices for options to purchase additional
3 property or services under the contract unless the agency
4 head has determined that there is a reasonable likelihood
5 that the options will be exercised.”.

6 **SEC. 1063. PROMPT NOTICE OF AWARD.**

7 (a). **SEALED BID PROCEDURES.**—Subsection (c) of
8 section 303B of the Federal Property and Administrative
9 Services Act of 1949 (41 U.S.C. 253b) is amended by add-
10 ing at the end the following: “As soon as practicable after
11 the date of contract award, the agency head shall, in ac-
12 cordance with procedures prescribed in the Federal Acqui-
13 sition Regulation, notify all offerors not awarded the con-
14 tract that the contract has been awarded.”.

15 (b). **COMPETITIVE PROPOSALS PROCEDURES.**—Para-
16 graph (2) of section 303B(d) of the Federal Property and
17 Administrative Services Act of 1949 (41 U.S.C. 253b(d)),
18 as redesignated by section 1061(b)(3)(B), is amended in
19 the second sentence by striking out “source and shall
20 promptly notify” and inserting in lieu thereof “source. As
21 soon as practicable after the date of contract award, the
22 agency head shall, in accordance with procedures pre-
23 scribed in the Federal Acquisition Regulation, notify”.

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1 **SEC. 1064. POST-AWARD DEBRIEFINGS.**

2 Section 303B of the Federal Property and Adminis-
3 trative Services Act of 1949 (41 U.S.C. 253b) is
4 amended—

5 (1) by redesignating subsections (e) and (f) as
6 subsections (f) and (g), respectively; and

7 (2) by inserting after subsection (d) the follow-
8 ing new subsection (e):

9 “(e)(1) When a contract is awarded by the head of
10 an executive agency on the basis of competitive proposals,
11 an unsuccessful offeror, upon written request received by
12 the agency within 3 days after the date on which the un-
13 successful offeror receives the notification of the contract
14 award, shall be debriefed and furnished the basis for the
15 selection decision and contract award. An employee of the
16 executive agency shall debrief the offeror promptly after
17 receipt of the request by the agency.

18 “(2) The debriefing shall include, at a minimum—

19 “(A) the executive agency’s evaluation of the
20 significant weak or deficient factors in the offeror’s
21 offer;

22 “(B) the overall evaluated cost and technical
23 rating of the offer of the contractor awarded the
24 contract and the overall evaluated cost and technical
25 rating of the offer of the debriefed offeror;

26 “(C) the overall ranking of all offers;

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1 “(D) a summary of the rationale for the award;

2 “(E) in the case of a proposal that incorporates
3 equipment that is a commercial item, the make and
4 model of the item incorporated in the offer of the
5 contractor awarded the contract; and

6 “(F) reasonable responses to questions posed by
7 the debriefed offeror as to whether source selection
8 procedures set forth in the solicitation, applicable
9 regulations, and other applicable authorities were
10 followed by the executive agency.

11 “(3) The debriefing may not include point-by-point
12 comparisons of the debriefed offeror's offer with other of-
13 fers and may not disclose any information that is exempt
14 from disclosure under section 552 of title 5, United States
15 Code, including information relating to—

16 “(A) trade secrets;

17 “(B) privileged or confidential manufacturing
18 processes and techniques; and

19 “(C) commercial and financial information that
20 is privileged or confidential, including cost break-
21 downs, profit, indirect cost rates, and similar infor-
22 mation.

23 “(4) Each solicitation for competitive proposals shall
24 include a statement that information described in para-
25 graph (2) may be disclosed in post-award debriefings.

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1 “(5) If, within one year after the date of the contract
 2 award and as a result of a successful procurement protest
 3 or otherwise, the executive agency seeks to fulfill the re-
 4 quirement under the contract either on the basis of a new
 5 solicitation of offers or on the basis of new best and final
 6 offers requested for that contract, the agency head shall
 7 make available to all offerors—

8 “(A) the information provided in debriefings
 9 under this subsection regarding the offer of the con-
 10 tractor awarded the contract; and

11 “(B) the comparable debriefing information
 12 that was prepared with respect to the original
 13 offerors.

14 “(6) The contracting officer shall include a summary
 15 of the debriefing in the contract file.”.

16 **SEC. 1065. PROTEST FILE.**

17 Section 303B of the Federal Property and Adminis-
 18 trative Services Act of 1949 (41 U.S.C. 253b), as amend-
 19 ed by section 1064(1), is further amended by adding at
 20 the end the following:

21 “(h)(1) If, in the case of a solicitation for a contract
 22 issued by, or an award or proposed award of a contract
 23 by, an agency head, a protest is filed pursuant to the pro-
 24 cedures in subchapter V of chapter 35 of title 31, United
 25 States Code, and an actual or prospective offeror so re-

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1 quests, a file of the protest shall be established by the pro-
 2 curing activity and reasonable access shall be provided to
 3 actual or prospective offerors.

4 “(2) Information exempt from disclosure under sec-
 5 tion 552 of title 5, United States Code, may be redacted
 6 in a file established pursuant to paragraph (1) unless an
 7 applicable protective order provides otherwise.

8 “(3) Regulations implementing this subsection shall
 9 be consistent with the regulations regarding the prepara-
 10 tion and submission of an agency’s protest file (the so-
 11 called ‘rule 4 file’) for protests to the General Services
 12 Board of Contract Appeals under section 111 of the Fed-
 13 eral Property and Administrative Services Act of 1949 (41
 14 U.S.C. 759).”.

15 **SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**
 16 **MENT OF PROTESTS.**

17 Section 303B of the Federal Property and Adminis-
 18 trative Services Act of 1949 (41 U.S.C. 253b), as amend-
 19 ed by section 1065, is further amended by adding at the
 20 end the following new subsection:

21 “(i) If, in connection with a protest, an agency head
 22 determines that a solicitation, proposed award, or award
 23 does not comply with the requirements of law or regula-
 24 tion, the agency head may take—

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1 “(1) any action set out in subparagraphs (A)
2 through (F) of subsection (b)(1) of section 3554 of
3 title 31, United States Code; and

4 “(2) may pay costs described in paragraph (1)
5 of section 3554(c) of such title within the limits re-
6 ferred to in paragraph (2) of such section.”.

7 **SEC. 1057. TWO-PHASE SELECTION PROCEDURES.**

8 (a) **PROCEDURES AUTHORIZED.**—Title III of the
9 Federal Property and Administrative Services Act of 1949
10 (41 U.S.C. 251 et seq.), as amended by section 1054, is
11 further amended by inserting after section 303H the fol-
12 lowing new section:

13 **“TWO-PHASE SELECTION PROCEDURES**

14 **“SEC. 303I. (a) PROCEDURES. AUTHORIZED.**—The
15 head of an executive agency may use two-phase selection
16 procedures for entering into a contract for the acquisition
17 of property or services when the agency head determines
18 that three or more offers will be received for such contract,
19 substantial design work must be performed before an
20 offeror can develop a price or cost proposal for such con-
21 tract, and the offerors will incur a substantial amount of
22 expenses in preparing the offers.

23 **“(b) PROCEDURES DESCRIBED.**—Two-phase selec-
24 tion procedures consist of the following:

25 “(1) The agency head issues a solicitation for
26 proposals that—

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1 “(A) provide information on technical ap-
 2 proach and the offeror's technical qualifications;
 3 and

4 “(B) do not include detailed design infor-
 5 mation or cost or price information.

6 “(2) The agency head evaluates the proposals
 7 on the basis of evaluation criteria set forth in the so-
 8 licitation, except that the agency head does not con-
 9 sider cost-related or price-related evaluation factors.

10 “(3) The agency head selects at least three
 11 offerors as the most highly qualified to provide the
 12 property or services under the contract and requests
 13 the selected offerors to submit competitive proposals
 14 that include cost or price information.

15 “(4) The agency head awards the contract in
 16 accordance with section 303B(d).

17 “(c) RESOURCE COMPARISON CRITERION RE-
 18 QUIRED.—In using two-phase selection procedures for en-
 19 tering into a contract, the agency head shall establish a
 20 resource criterion or a financial criterion applicable to the
 21 contract in order to provide a consistent basis for compar-
 22 ing the offerors and their proposals.

23 “(d) TWO-PHASE SELECTION PROCEDURES DE-
 24 FINED.—In this section, the term ‘two-phase selection pro-
 25 cedures’ means procedures described in subsection (b) that

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1 are used for the selection of a contractor on the basis of
 2 cost or price and other evaluation criteria to provide prop-
 3 erty or services in accordance with the provisions of a con-
 4 tract which requires the contractor to design the property
 5 to be acquired under the contract and produce or con-
 6 struct such property.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
 8 in the first section of such Act, as amended by section
 9 1054, is further amended by inserting after the item relat-
 10 ing to section 303H the following new item:

“Sec. 303I. Two-phase selection procedures.”.

11 **Subpart C—Kinds of Contracts**

12 **SEC. 1071. AGENCY HEAD DETERMINATION REGARDING**
 13 **USE OF COST TYPE OR INCENTIVE CON-**
 14 **TRACT.**

15 Section 304(b) of the Federal Property and Adminis-
 16 trative Services Act of 1949 (41 U.S.C. 254(b)) is amend-
 17 ed by striking out the second sentence.

18 **SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.**

19 (a) AUTHORITY.—Title III of the Federal Property
 20 and Administrative Services Act of 1949 (41 U.S.C. 251
 21 et seq.), as amended by section 1067, is further amended
 22 by inserting after section 303I the following new section:

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1 "MULTIYEAR CONTRACTS

2 "SEC. 303J. (a) AUTHORITY.—The head of an execu-
 3 tive agency may enter into a multiyear contract for the
 4 acquisition of property or services if—

5 "(1) funds are available and obligated for such
 6 contract, for the full period of the contract or for the
 7 first fiscal year in which the contract is in effect,
 8 and for the estimated costs associated with any nec-
 9 essary termination of such contract; and

10 "(2) the agency head determines that—

11 "(A) the need for the property or services
 12 is reasonably firm and continuing over the pe-
 13 riod of the contract; and

14 "(B) a multiyear contract will serve the
 15 best interests of the United States by encourag-
 16 ing effective competition or promoting economy
 17 in administration, performance, and operation
 18 of the agency's programs.

19 "(b) TERMINATION CLAUSE.—A multiyear contract
 20 entered into under the authority of this section shall in-
 21 clude a clause that provides that the contract shall be ter-
 22 minated if funds are not made available for the continu-
 23 ation of such contract in any fiscal year covered by the
 24 contract. Amounts available for paying termination costs

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1 shall remain available for such purpose until the costs as-
 2 sociated with termination of the contract are paid.

3 “(c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
 4 tion is intended to modify or affect any other provision
 5 of law that authorizes multiyear contracts.”.

6 “(b) **CLERICAL AMENDMENT.**—The table of contents
 7 in the first section of such Act, as amended by section
 8 1067, is further amended by inserting after the item relat-
 9 ing to section 303I the following new item:

“Sec. 303J. Multiyear contracts.”.

10 **SEC. 1073. SEVERABLE SERVICES CONTRACTS CROSSING**
 11 **FISCAL YEARS.**

12 “(a) **AUTHORITY.**—Title III of the Federal Property
 13 and Administrative Services Act of 1949 (41 U.S.C. 251
 14 et seq.), as amended by section 1072, is further amended
 15 by inserting after section 303J the following new section:

16 “**SEVERABLE SERVICES CONTRACTS FOR PERIODS**
 17 **CROSSING FISCAL YEARS**

18 “**SEC. 303K. (a) AUTHORITY.**—The head of an exec-
 19 utive agency may enter into a severable contract for pro-
 20 curement of services for a period that begins in one fiscal
 21 year and ends in the next fiscal year if (without regard
 22 to any option to extend the period of the contract) the
 23 contract period does not exceed one year.

24 “(b) **AVAILABILITY OF FUNDS.**—To the extent pro-
 25 vided in appropriations Acts, funds obligated for a con-

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1 tract entered into under the authority of subsection (a)
 2 shall remain available until no longer needed to pay for
 3 such contract.

4 “(c) SEVERABLE CONTRACT DEFINED.—In this sec-
 5 tion, the term ‘severable contract’ means a contract that
 6 contains a clause that makes the effectiveness of the con-
 7 tract for periods after the end of the fiscal year in which
 8 the performance of the contract begins subject to the
 9 availability of appropriations.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
 11 in the first section of such Act, as amended by section
 12 1072, is further amended by inserting after the item relat-
 13 ing to section 303J the following new item:

“Sec. 303K. Severable services contracts for periods crossing fiscal years.”.

14 **SEC. 1074. ECONOMY ACT PURCHASES.**

15 (a) REGULATIONS REQUIRED.—Not later than six
 16 months after the date of the enactment of this Act, the
 17 Federal Acquisition Regulation shall be revised to include
 18 regulations governing the exercise of the authority under
 19 section 1535 of title 31, United States Code, for Federal
 20 agencies to purchase goods and services under contracts
 21 entered into or administered by other agencies.

22 (b) CONTENT OF REGULATIONS.—The regulations
 23 prescribed pursuant to subsection (a) shall—

24 (1) require that each purchase described in sub-
 25 section (a) be approved in advance by a contracting

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1 officer of the ordering agency with authority to con-
2 tract for the goods or services to be purchased or by
3 another official in a position specifically designated
4 by regulation to approve such purchase;

5 (2) provide that such a purchase of goods or
6 services may be made only if—

7 (A) the purchase is appropriately made
8 under a contract that the agency filling the pur-
9 chase order entered into, before the purchase
10 order, in order to meet the requirements of
11 such agency for the same or similar goods or
12 services;

13 (B) the agency filling the purchase order is
14 better qualified to enter into or administer the
15 contract for such goods or services by reason of
16 capabilities or expertise that is not available
17 within the ordering agency; or

18 (C) the agency or unit filling the order is
19 specifically authorized by law or regulations to
20 purchase such goods or services on behalf of
21 other agencies;

22 (3) prohibit any such purchase under a contract
23 or other agreement entered into or administered by
24 an agency not covered by the provisions of chapter
25 137 of title 10, United States Code, or title III of

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1 the Federal Property and Administrative Services
2 Act of 1949 (41 U.S.C. 251 et seq.) and not covered
3 by the Federal Acquisition Regulation unless the
4 purchase is approved in advance by the senior pro-
5 curement official responsible for purchasing by the
6 ordering agency; and

7 (4) prohibit any payment to the agency filling
8 a purchase order of any fee that exceeds the actual
9 cost or, if the actual cost is not known, the esti-
10 mated cost of entering into and administering the
11 contract or other agreement under which the order
12 is filled.

13 (c) MONITORING SYSTEM REQUIRED.—The Adminis-
14 trator for Federal Procurement Policy shall ensure that,
15 not later than one year after the date of the enactment
16 of this Act, systems for collecting and evaluating procure-
17 ment data are capable of collecting and evaluating appro-
18 priate data on procurements conducted under the regula-
19 tions prescribed pursuant to subsection (a).

20 (d) TERMINATION.—This section shall cease to be ef-
21 fective one year after the date on which final regulations
22 prescribed pursuant to subsection (a) take effect.

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1 **PART III—ACQUISITIONS GENERALLY**

2 **SEC. 1001. POLICY REGARDING CONSIDERATION OF CON-**
 3 **TRACTOR PAST PERFORMANCE.**

4 (a) **POLICY.**—Section 2 of the Office of Federal Pro-
 5 curement Policy Act (41 U.S.C. 401) is amended—

6 (1) by striking out “and” at the end of para-
 7 graph (12);

8 (2) by striking out the period at the end of
 9 paragraph (13) and inserting in lieu thereof “; and”;
 10 and

11 (3) by adding at the end the following new
 12 paragraph:

13 “(14) establishing policies and procedures that
 14 encourage the consideration of contractors’ past per-
 15 formance in the selection of contractors.”.

16 (b) **GUIDANCE REQUIRED.**—Section 6 of the Office
 17 of Federal Procurement Policy Act (41 U.S.C. 405) is
 18 amended by adding at the end the following:

19 “(j)(1) Congress makes the following findings:

20 “(A) Past contract performance of an offeror is
 21 one of the relevant factors that contracting officials
 22 of executive agencies should consider in entering into
 23 contracts.

24 “(B) It is appropriate for a contracting official
 25 to consider past contract performance of an offeror
 26 as an indicator of the likelihood that the offeror will

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1 successfully perform a contract to be entered into by
2 that official.

3 “(2) The Administrator shall prescribe for executive
4 agencies guidance regarding consideration of the past con-
5 tract performance of offerors in awarding contracts. The
6 guidance shall include—

7 “(A) standards for evaluating past performance
8 with respect to cost (when appropriate), schedule,
9 compliance with technical or functional specifica-
10 tions, and other relevant performance factors that
11 facilitate consistent and fair evaluation by all execu-
12 tive agencies;

13 “(B) policies for the collection and maintenance
14 of information on past contract performance that, to
15 the maximum extent practicable, facilitate auto-
16 mated collection, maintenance, and dissemination of
17 information and provide for ease of collection, main-
18 tenance, and dissemination of information by other
19 methods, as necessary; and

20 “(C) policies for ensuring that offerors are af-
21 forded an opportunity to submit information on past
22 contract performance and that information submit-
23 ted by offerors is considered.

24 “(3) The Administrator shall prescribe for all execu-
25 tive agencies the policy regarding the period for which in-

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1 formation on past performance of offerors may be main-
2 tained and considered.

3 “(4) In the case of an offeror regarding whom there
4 is no information on past contract performance or regard-
5 ing whom information on past contract performance is not
6 available, the offeror may not be evaluated favorably or
7 unfavorably on the factor of past contract performance.”.

8 **SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL RE-**
9 **PORT ON COMPETITION.**

10 Section 23 of the Office of Federal Procurement Pol-
11 icy Act (41 U.S.C. 419) is repealed.

12 **Subtitle B—Truth in Negotiations**

13 **PART I—ARMED SERVICES ACQUISITIONS**

14 **SEC. 1301. STABILIZATION OF DOLLAR THRESHOLD OF AP-**
15 **PLICABILITY.**

16 (a) **REPEAL OF REVERSION TO LOWER THRESH-**
17 **OLD.**—Paragraph (1)(A) of section 2306a(a) of title 10,
18 United States Code, is amended—

19 (1) in clause (i), by striking out “and before
20 January 1, 1996,”; and

21 (2) in clause (ii), by striking out “or after De-
22 cember 31, 1995,”.

23 (b) **ADJUSTMENTS FOR CHANGES IN DOLLAR VAL-**
24 **UES.**—Section 2306a(a) of such title is amended by add-
25 ing at the end the following new subparagraph:

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1 “(7) Effective on October 1 of each year that is divis-
 2 ible by 5, each amount set forth in paragraph (1) shall
 3 be adjusted to the amount that is equal to the fiscal year
 4 1994 constant dollar value of the amount set forth. Any
 5 amount, as so adjusted, that is not evenly divisible by
 6 \$50,000 shall be rounded to the nearest multiple of
 7 \$50,000. In the case of an amount that is evenly divisible
 8 by \$25,000 but not evenly divisible by \$50,000, the
 9 amount shall be rounded to the next higher multiple of
 10 \$50,000.”.

11 **SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA RE-**
 12 **QUIREMENTS.**

13 (a) **EXCEPTIONS STATED.**—Subsection (b) of section
 14 2306a of title 10, United States Code, is amended to read
 15 as follows:

16 “(b) **EXCEPTIONS.**—(1) Submission of cost and pric-
 17 ing data shall not be required under subsection (a)—

18 “(A) in the case of a contract, a subcontract,
 19 or a contract or subcontract modification, for which
 20 the price agreed upon is based on—

21 “(i) adequate price competition;

22 “(ii) established catalog or market prices
 23 of commercial items or of services regularly
 24 used for other than Government purposes, as

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1 the case may be, that are sold in substantial
2 quantities to the general public; or

3 "(iii) prices set by law or regulation; or

4 "(B) in an exceptional case when the head of
5 the agency concerned determines that the require-
6 ments of this section may be waived and states in
7 writing the reasons for such determination.

8 "(2) Submission of cost and pricing data shall not
9 be required under subsection (a) in the case of a modifica-
10 tion of a contract or subcontract for a commercial item
11 if—

12 "(A) the contract or subcontract being modified
13 is a contract or subcontract for which submission of
14 cost and pricing data may not be required by reason
15 of paragraph (1)(A);

16 "(B) the modification is not a case in which
17 paragraph (1)(A) prohibits the head of an agency
18 from requiring submission of cost and pricing data;
19 and

20 "(C) the modification would not change the
21 contract or subcontract, as the case may be, from a
22 contract or subcontract for the acquisition of a com-
23 mercial item to a contract or subcontract for the ac-
24 quisition of a noncommercial item."

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1 (b) CONFORMING AMENDMENT TO REFERENCE.—

2 Subsection (a)(5) of such section is amended by striking
3 out "subsection (b)(2)" and inserting in lieu thereof "sub-
4 section (b)(1)(B)".

5 **SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUB-**
6 **MISSION NOT OTHERWISE REQUIRED.**

7 Subsection (c) of section 2306a of title 10, United
8 States Code, is amended to read as follows:

9 "(c) **LIMITATION ON AUTHORITY TO REQUIRE COST**
10 **OR PRICING DATA.**—When cost or pricing data are not
11 required to be submitted under this section by reason of
12 a \$500,000 threshold set forth in subsection (a) (as ad-
13 justed pursuant to paragraph (7) of such subsection) or
14 by reason of an exception set forth in subsection (b), sub-
15 mission of such data may not be required unless the head
16 of an agency concerned determines that such data are nec-
17 essary for the evaluation by the agency of the reasonable-
18 ness of the price of the contract or subcontract to which
19 the data relate. In any case in which the head of an agency
20 requires such data to be submitted in accordance with the
21 preceding sentence, the agency head shall document in
22 writing the reasons for such requirement."

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1 **SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL**
 2 **ITEMS.**

3 Section 2306a of title 10, United States Code, is
 4 amended—

5 (1) by redesignating subsections (d), (e), (f),
 6 and (g) as subsections (e), (f), (g), and (i), respec-
 7 tively; and

8 (2) by inserting after subsection (c) the follow-
 9 ing new subsection (d):

10 “(d) **ADDITIONAL EXCEPTION PROVISIONS REGARD-**
 11 **ING COMMERCIAL ITEMS.**—(1) To the maximum extent
 12 practicable, the head of an agency shall—

13 “(A) conduct procurements of commercial items
 14 on a competitive basis; and

15 “(B) exercise the authority provided in sub-
 16 section (b)(1)(B) to exempt the contracts and sub-
 17 contracts under such procurements from the require-
 18 ments of subsection (a).

19 “(2) In any case in which it is not practicable to con-
 20 duct a procurement of a commercial item on a competitive
 21 basis and the procurement is not covered by an exception
 22 in subsection (b), the contracting officer shall nonetheless
 23 exempt a contract or subcontract under the procurement
 24 from the requirements of subsection (a) if the contracting
 25 officer develops or obtains from the offeror or contractor,
 26 or from another source or sources, in accordance with

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1 standards and procedures set forth in the Federal Acquisi-
 2 tion Regulation, information on prices at which the same
 3 or similar items have been sold in the commercial market
 4 that is adequate for evaluating the reasonableness of the
 5 price of the contract or subcontract for a commercial item.

6 “(3)(A) In accordance with procedures prescribed in
 7 the Federal Acquisition Regulation, the head of an agency
 8 shall have the right to examine all information provided
 9 by an offeror, contractor, or subcontractor pursuant to
 10 paragraph (2) and all books and records of such offeror,
 11 contractor, or subcontractor that directly relate to such
 12 information in order to determine whether the agency is
 13 receiving accurate information required under this section.

14 “(B) The right under subparagraph (A) shall expire
 15 3 years after the date of award of the contract, or 3 years
 16 after the date of the modification of the contract, with
 17 respect to which the information was provided.”

18 **SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CON-**
 19 **TRACTOR RECORDS.**

20 Section 2306a of title 10, United States Code, is
 21 amended by striking out subsection (g), as redesignated
 22 by section 1204(1), and inserting in lieu thereof the fol-
 23 lowing:

24 “(g) **RIGHT OF UNITED STATES TO EXAMINE CON-**
 25 **TRACTOR RECORDS.**—For the purpose of evaluating the

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1 accuracy, completeness, and currency of cost or pricing
2 data required to be submitted by this section, the head
3 of an agency shall have the rights provided by section
4 2313 of this title.”.

5 **SEC. 1206. REQUIRED REGULATIONS.**

6 Section 2306a of title 10, United States Code, as
7 amended by sections 1204 and 1205, is further amended
8 by inserting after subsection (g) the following new sub-
9 section:

10 “(h) **REQUIRED REGULATIONS.**—The Secretary shall
11 prescribe regulations concerning the types of information
12 that offerors must submit for a contracting officer to con-
13 sider in determining whether the price of a procurement
14 to the Government is fair and reasonable when certified
15 cost or pricing data are not required to be submitted
16 under this section because the price of the procurement
17 to the United States is not expected to exceed an applica-
18 ble \$500,000 threshold set forth in subsection (a) (as ad-
19 justed pursuant to paragraph (7) of such subsection).
20 Such information, at a minimum, shall include appropriate
21 information on the prices at which such offeror has pre-
22 viously sold the same or similar products.”.

23 **SEC. 1207. CONSISTENCY OF TIME REFERENCES.**

24 Section 2306a of title 10, United States Code, as
25 amended by section 1204(1), is further amended—

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1 (1) in subparagraphs (A)(ii) and (B)(ii) of sub-
 2 section (e)(4), by inserting "or, if applicable consist-
 3 ent with paragraph (1)(B), another date agreed
 4 upon between the parties," after "(or price of the
 5 modification)"; and

6 (2) in subsection (i), by inserting "or, if appli-
 7 cable consistent with subsection (d)(1)(B), another
 8 date agreed upon between the parties" after "(or the
 9 price of a contract modification)".

10 **SEC. 1208. REPEAL OF SUPERSEDED PROVISION.**

11 Subsections (b) and (c) of section 803 of Public Law
 12 101-510 (10 U.S.C. 2306a note) are repealed.

13 **PART II—CIVILIAN AGENCY ACQUISITIONS**

14 **SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO**
 15 **ENSURE UNIFORM TREATMENT OF COST OR**
 16 **PRICING DATA.**

17 (a) **IN GENERAL.**—Title III of the Federal Property
 18 and Administrative Services Act of 1949 (41 U.S.C. 251
 19 et seq.) is amended—

20 (1) in section 304, by striking out subsection
 21 (d); and

22 (2) by inserting after section 304 the following
 23 new section:

24 "COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

25 "SEC. 304A. (a) **REQUIRED COST OR PRICING DATA**

26 **AND CERTIFICATION.**—(1) An agency head shall require

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1 offerors, contractors, and subcontractors to make cost or
2 pricing data available as follows:

3 “(A) An offeror for a prime contract under this
4 title to be entered into using procedures other than
5 sealed-bid procedures shall be required to submit
6 cost or pricing data before the award of a contract
7 if—

8 “(i) in the case of a prime contract entered
9 into after the date of the enactment of the Fed-
10 eral Acquisition Streamlining Act of 1994, the
11 price of the contract to the United States is ex-
12 pected to exceed \$500,000; and

13 “(ii) in the case of a prime contract en-
14 tered into on or before the date of the enact-
15 ment of the Federal Acquisition Streamlining
16 Act of 1994, the price of the contract to the
17 United States is expected to exceed \$100,000.

18 “(B) The contractor for a prime contract under
19 this chapter shall be required to submit cost or pric-
20 ing data before the pricing of a change or modifica-
21 tion to the contract if—

22 “(i) in the case of a change or modification
23 made to a prime contract referred to in sub-
24 paragraph (A)(i), the price adjustment is ex-
25 pected to exceed \$500,000;

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1 “(ii) in the case of a change or modifica-
2 tion made to a prime contract that was entered
3 into on or before the date of the enactment of
4 the Federal Acquisition Streamlining Act of
5 1994, and that has been modified pursuant to
6 paragraph (6), the price adjustment is expected
7 to exceed \$500,000; and

8 “(iii) in the case of a change or modifica-
9 tion not covered by clause (i) or (ii), the price
10 adjustment is expected to exceed \$100,000.

11 “(C) An offeror for a subcontract (at any tier)
12 of a contract under this title shall be required to
13 submit cost or pricing data before the award of the
14 subcontract if the prime contractor and each higher-
15 tier subcontractor have been required to make avail-
16 able cost or pricing data under this section and—

17 “(i) in the case of a subcontract under a
18 prime contract referred to in subparagraph
19 (A)(i), the price of the subcontract is expected
20 to exceed \$500,000;

21 “(ii) in the case of a subcontract entered
22 into under a prime contract that was entered
23 into on or before the date of the enactment of
24 the Federal Acquisition Streamlining Act of
25 1994, and that has been modified pursuant to

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1 paragraph (6), the price of the subcontract is
2 expected to exceed \$500,000; and

3 “(iii) in the case of a subcontract not cov-
4 ered by clause (i) or (ii), the price of the sub-
5 contract is expected to exceed \$100,000.

6 “(D) The subcontractor for a subcontract cov-
7 ered by subparagraph (C) shall be required to sub-
8 mit cost or pricing data before the pricing of a
9 change or modification to the subcontract if—

10 “(i) in the case of a change or modification
11 to a subcontract referred to in subparagraph
12 (C)(i) or (C)(ii), the price adjustment is ex-
13 pected to exceed \$500,000; and

14 “(ii) in the case of a change or modifica-
15 tion to a subcontract referred to in subpara-
16 graph (C)(iii), the price adjustment is expected
17 to exceed \$100,000.

18 “(2) A person required, as an offeror, contractor, or
19 subcontractor, to submit cost or pricing data under para-
20 graph (1) (or required by the agency head concerned to
21 submit such data in accordance with subsection (c)) shall
22 be required to certify that, to the best of the person's
23 knowledge and belief, the cost or pricing data submitted
24 are accurate, complete, and current.

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1 “(3) Cost or pricing data required to be submitted
2 under paragraph (1) (or in accordance with subsection
3 (c)), and a certification required to be submitted under
4 paragraph (2), shall be submitted—

5 “(A) in the case of a submission by a prime
6 contractor (or an offeror for a prime contract), to
7 the contracting officer for the contract (or to a des-
8 ignated representative of the contracting officer); or

9 “(B) in the case of a submission by a sub-
10 contractor (or an offeror for a subcontract), to the
11 prime contractor.

12 “(4) Except as provided under subsection (b), this
13 section applies to contracts entered into by an agency head
14 on behalf of a foreign government.

15 “(5) For purposes of paragraph (1)(C), a contractor
16 or subcontractor granted a waiver under subsection
17 (b)(i)(B) shall be considered as having been required to
18 make available cost or pricing data under this section.

19 “(6)(A) Upon the request of a contractor that was
20 required to submit cost or pricing data under paragraph
21 (1) in connection with a prime contract entered into on
22 or before the date of the enactment of the Federal Acquisi-
23 tion Streamlining Act of 1994, the agency head that en-
24 tered into such contract shall modify the contract to re-
25 flect subparagraphs (B)(ii) and (C)(ii) of paragraph (1).

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1 All such modifications shall be made without requiring
2 consideration.

3 “(B) An agency head is not required to modify a con-
4 tract under subparagraph (A) if that agency head deter-
5 mines that the submission of cost or pricing data with re-
6 spect to that contract should be required in accordance
7 with subsection (c).

8 “(7) Effective on October 1 of each year that is divis-
9 ible by 5, each amount set forth in paragraph (1) shall
10 be adjusted to the amount that is equal to the fiscal year
11 1994 constant dollar value of the amount set forth. Any
12 amount, as so adjusted, that is not evenly divisible by
13 \$50,000 shall be rounded to the nearest multiple of
14 \$50,000. In the case of an amount that is evenly divisible
15 by \$25,000 but not evenly divisible by \$50,000, the
16 amount shall be rounded to the next higher multiple of
17 \$50,000.

18 “(b) EXCEPTIONS.—(1) Submission of cost and pric-
19 ing data shall not be required under subsection (a)—

20 “(A) in the case of a contract, a subcontract,
21 or a contract or subcontract modification, for which
22 the price agreed upon is based on—

23 “(i) adequate price competition;

24 “(ii) established catalog or market prices
25 of commercial items or of services regularly

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1 used for other than Government purposes, as
2 the case may be, that are sold in substantial
3 quantities to the general public; or

4 “(iii) prices set by law or regulation; or

5 “(B) in an exceptional case when the agency
6 head concerned determines that the requirements of
7 this section may be waived and states in writing the
8 reasons for such determination.

9 “(2) Submission of cost and pricing data shall not
10 be required under subsection (a) in the case of a modifica-
11 tion of a contract or subcontract for a commercial item
12 if—

13 “(A) the contract or subcontract being modified
14 is a contract or subcontract for which submission of
15 cost and pricing data may not be required by reason
16 of paragraph (1)(A);

17 “(B) the modification is not a case in which
18 paragraph (1)(A) prohibits the agency head from re-
19 quiring submission of cost and pricing data; and

20 “(C) the modification would not change the
21 contract or subcontract, as the case may be, from a
22 contract or subcontract for the acquisition of a com-
23 mercial item to a contract or subcontract for the ac-
24 quisition of a noncommercial item.

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1 “(c) LIMITATION ON AUTHORITY TO REQUIRE COST
 2 OR PRICING DATA.—When cost or pricing data are not
 3 required to be submitted under this section by reason of
 4 a \$500,000 threshold set forth in subsection (a) (as ad-
 5 justed pursuant to paragraph (7) of such subsection) or
 6 by reason of an exception in subsection (b), submission
 7 of such data may not be required unless the agency head
 8 concerned determines that such data are necessary for the
 9 evaluation by the agency of the reasonableness of the price
 10 of the contract or subcontract to which the data relate.
 11 In any case in which the agency head requires such data
 12 to be submitted in accordance with the preceding sentence,
 13 the agency head shall document in writing the reasons for
 14 such requirement.

15 “(d) ADDITIONAL EXCEPTION PROVISIONS REGARD-
 16 ING COMMERCIAL ITEMS.—(1) To the maximum extent
 17 practicable, an agency head shall—

18 “(A) conduct procurements of commercial items
 19 on a competitive basis; and

20 “(B) exercise the authority provided in sub-
 21 section (b)(1)(B) to exempt the contracts and sub-
 22 contracts under such procurements from the require-
 23 ments of subsection (a). --

24 “(2) In any case in which it is not practicable to con-
 25 duct a procurement of a commercial item on a competitive

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1 basis and the procurement is not covered by an exception
2 in subsection (b), the contracting officer shall nonetheless
3 exempt a contract or subcontract under the procurement
4 from the requirements of subsection (a) if the contracting
5 officer develops or obtains from the offeror or contractor,
6 or from another source or sources, in accordance with
7 standards and procedures set forth in the Federal Acquisi-
8 tion Regulation, information on prices at which the same
9 or similar items have been sold in the commercial market
10 that is adequate for evaluating the reasonableness of the
11 price of the contract or subcontract for a commercial item.

12 “(3)(A) In accordance with procedures prescribed in
13 the Federal Acquisition Regulation, an agency head shall
14 have the right to examine all information provided by an
15 offeror, contractor, or subcontractor pursuant to para-
16 graph (2) and all books and records of such offeror, con-
17 tractor, or subcontractor that directly relate to such infor-
18 mation in order to determine whether the agency is receiv-
19 ing accurate information required under this section.

20 “(B) The right under subparagraph (A) shall expire
21 3 years after the date of award of the contract, or 3 years
22 after the date of the modification of the contract, with
23 respect to which the information was provided.

24 “(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR
25 PRICING DATA.—(1)(A) A prime contract (or change or

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1 modification to a prime contract) under which a certificate
2 under subsection (a)(2) is required shall contain a provi-
3 sion that the price of the contract to the United States,
4 including profit or fee, shall be adjusted to exclude any
5 significant amount by which it may be determined by the
6 agency head that such price was increased because the
7 contractor (or any subcontractor required to make avail-
8 able such a certificate) submitted defective cost or pricing
9 data.

10 “(B) For the purposes of this section, defective cost
11 or pricing data are cost or pricing data which, as of the
12 date of agreement on the price of the contract (or another
13 date agreed upon between the parties), were inaccurate,
14 incomplete, or noncurrent. If for purposes of the preceding
15 sentence the parties agree upon a date other than the date
16 of agreement on the price of the contract, the date agreed
17 upon by the parties shall be as close to the date of agree-
18 ment on the price of the contract as is practicable.

19 “(2) In determining for purposes of a contract price
20 adjustment under a contract provision required by para-
21 graph (1) whether, and to what extent, a contract price
22 was increased because the contractor (or a subcontractor)
23 submitted defective cost or pricing data, it shall be a de-
24 fense that the United States did not rely on the defective
25 data submitted by the contractor or subcontractor.

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1 “(3) It is not a defense to an adjustment of the price
2 of a contract under a contract provision required by para-
3 graph (1) that—

4 “(A) the price of the contract would not have
5 been modified even if accurate, complete, and cur-
6 rent cost or pricing data had been submitted by the
7 contractor or subcontractor because the contractor
8 or subcontractor—

9 “(i) was the sole source of the property or
10 services procured; or

11 “(ii) otherwise was in a superior bargain-
12 ing position with respect to the property or
13 services procured;

14 “(B) the contracting officer should have known
15 that the cost and pricing data in issue were defective
16 even though the contractor or subcontractor took no
17 affirmative action to bring the character of the data
18 to the attention of the contracting officer;

19 “(C) the contract was based on an agreement
20 between the contractor and the United States about
21 the total cost of the contract and there was no
22 agreement about the cost of each item procured
23 under such contract; or

24 “(D) the prime contractor or subcontractor did
25 not submit a certification of cost and pricing data

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1 relating to the contract as required under subsection
2 (a)(2).

3 “(4)(A) A contractor shall be allowed to offset an
4 amount against the amount of a contract price adjustment
5 under a contract provision required by paragraph (1) if—

6 “(i) the contractor certifies to the contracting
7 officer (or to a designated representative of the con-
8 tracting officer) that, to the best of the contractor’s
9 knowledge and belief, the contractor is entitled to
10 the offset; and

11 “(ii) the contractor proves that the cost or pric-
12 ing data were available before the date of agreement
13 on the price of the contract (or price of the modi-
14 fication), or, if applicable consistent with paragraph
15 (1)(B), another date agreed upon between the par-
16 ties, and that the data were not submitted as speci-
17 fied in subsection (a)(3) before such date.

18 “(B) A contractor shall not be allowed to offset an
19 amount otherwise authorized to be offset under subpara-
20 graph (A) if—

21 “(i) the certification under subsection (a)(2)
22 with respect to the cost or pricing data involved was
23 known to be false when signed; or

24 “(ii) the United States proves that, had the cost
25 or pricing data referred to in subparagraph (A)(ii)

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1 been submitted to the United States before the date
 2 of agreement on the price of the contract (or price
 3 of the modification) or, if applicable under para-
 4 graph (1)(B), another date agreed upon between the
 5 parties, the submission of such cost or pricing data
 6 would not have resulted in an increase in that price
 7 in the amount to be offset.

8 “(f) INTEREST AND PENALTIES FOR CERTAIN OVER-
 9 PAYMENTS.—(1) If the United States makes an overpay-
 10 ment to a contractor under a contract with an executive
 11 agency subject to this section and the overpayment was
 12 due to the submission by the contractor of defective cost
 13 or pricing data, the contractor shall be liable to the United
 14 States—

15 “(A) for interest on the amount of such over-
 16 payment, to be computed—

17 “(i) for the period beginning on the date
 18 the overpayment was made to the contractor
 19 and ending on the date the contractor repays
 20 the amount of such overpayment to the United
 21 States; and

22 “(ii) at the current rate prescribed by the
 23 Secretary of the Treasury under section 6621
 24 of the Internal Revenue Code of 1986; and

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1 “(B) if the submission of such defective data
2 was a knowing submission, for an additional amount
3 equal to the amount of the overpayment.

4 “(2) Any liability under this subsection of a contrac-
5 tor that submits cost or pricing data but refuses to submit
6 the certification required by subsection (a)(2) with respect
7 to the cost or pricing data shall not be affected by the
8 refusal to submit such certification.

9 “(g) RIGHT OF UNITED STATES TO EXAMINE CON-
10 TRACTOR RECORDS.—For the purpose of evaluating the
11 accuracy, completeness, and currency of cost or pricing
12 data required to be submitted by this section, the head
13 of an agency shall have the rights provided by section
14 304B(a)(2).

15 “(h) REQUIRED REGULATIONS.—The Federal Acqui-
16 sition Regulation shall include regulations concerning the
17 types of information that offerors must submit for a con-
18 tracting officer to consider in determining whether the
19 price of a procurement to the Government is fair and rea-
20 sonable when certified cost or pricing data are not re-
21 quired to be submitted under this section because the price
22 of the procurement to the United States is not expected
23 to exceed an applicable \$500,000 threshold set forth in
24 subsection (a) (as adjusted pursuant to paragraph (7) of
25 such subsection). Such information, at a minimum, shall

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1 include appropriate information on the prices at which
 2 such offeror has previously sold the same or similar prod-
 3 ucts.

4 “(i) **COST OR PRICING DATA DEFINED.**—In this sec-
 5 tion, the term ‘cost or pricing data’ means all facts that,
 6 as of the date of agreement on the price of a contract
 7 (or the price of a contract modification) or, if applicable
 8 consistent with subsection (e)(1)(B), another date agreed
 9 upon between the parties, a prudent buyer or seller would
 10 reasonably expect to affect price negotiations significantly.
 11 Such term does not include information that is
 12 judgmental, but does include the factual information from
 13 which a judgment was derived.”.

14 (b) **TABLE OF CONTENTS.**—The table of contents in
 15 the first section of such Act is amended by inserting after
 16 the item relating to section 304 the following:

“Sec. 304A. Cost or pricing data: truth in negotiations.”.

17 **SEC. 1252. REPEAL OF OBSOLETE PROVISION.**

18 (a) **REPEAL.**—Section 303E of the Federal Property
 19 and Administrative Services Act of 1949 (41 U.S.C. 253e)
 20 is repealed.

21 (b) **CLERICAL AMENDMENT.**—The table of contents
 22 in the first section of such Act is amended by striking out
 23 the item relating to section 303E.

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1 **Subtitle C—Research and**
 2 **Development**

3 **SEC. 1301. RESEARCH PROJECTS.**

4 (a) **AUTHORIZED MEANS.**—Subsection (b) of section
 5 2358 of title 10, United States Code, is amended to read
 6 as follows:

7 “(b) **AUTHORIZED MEANS.**—The Secretary of De-
 8 fense or the Secretary of a military department may per-
 9 form research and development projects—

10 “(1) by contract entered into with, grant made
 11 to, or cooperative agreement entered into with edu-
 12 cational or research institutions, private businesses,
 13 or other persons in accordance with the provisions of
 14 chapter 63 of title 31;

15 “(2) through one or more military departments;

16 “(3) by using employees and consultants of the
 17 Department of Defense; or

18 “(4) by mutual agreement with the head of any
 19 other department or agency of the Federal Govern-
 20 ment.”.

21 (b) **CAPTION AMENDMENT.**—The caption of sub-
 22 section (c) of such section is amended by striking out
 23 “MILITARY” and inserting in lieu thereof “DEPARTMENT
 24 OF DEFENSE”.

25 (c) **ADVANCED RESEARCH PROJECTS.**—

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1 (1) RESTORATION AND REVISION OF FORMER
2 STATEMENT OF AUTHORITY.—Section 2371 of title
3 10, United States Code, is amended—

4 (A) by redesignating subsections (a), (b),
5 (c), (d), (e), and (f) as subsections (b), (c), (d),
6 (e), (f), and (g), respectively; and

7 (B) by inserting before subsection (b), as
8 so redesignated, the following new subsection
9 (a):

10 “(a) The Secretary of Defense, acting through the
11 Advanced Research Projects Agency and such other ele-
12 ments of the Department of Defense as the Secretary may
13 designate, and the Secretary of each military department,
14 in carrying out basic, applied, and advanced research
15 projects, may enter into other transactions, in addition to
16 contracts, grants, and cooperative agreements authorized
17 by section 2358 of this title.”.

18 (2) CONFORMING AMENDMENTS.—Such section,
19 as amended by paragraph (1), is further amended—

20 (A) in subsection (b)—

21 (i) in paragraph (1), by inserting “or
22 subsection (a)” after “section 2358 of this
23 title”; and

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- 1 (ii) in paragraph (2), by striking out
- 2 "subsection (d)" and inserting in lieu
- 3 thereof "subsection (e)";
- 4 (B) in subsection (c), by inserting "section
- 5 2358 of this title or" after "under";
- 6 (C) in subsection (d)—
- 7 (i) in paragraph (1), by striking out
- 8 "this section" and inserting in lieu thereof
- 9 "section 2358 of this title or subsection
- 10 (a)"; and
- 11 (ii) in paragraph (3), by striking out
- 12 "this section" and inserting in lieu thereof
- 13 "section 2358 of this title or subsection
- 14 (a)";
- 15 (D) in subsection (e), by inserting "or sub-
- 16 section (a)" in the first sentence after "section
- 17 2358 of this title"; and
- 18 (E) in subsection (f)—
- 19 (i) in the first sentence, by striking
- 20 out "under this section" and inserting in
- 21 lieu thereof "under section 2358 of this
- 22 title or subsection (a)";
- 23 (ii) in paragraph (4), by striking out
- 24 "subsection (a)" and inserting in lieu
- 25 thereof "subsection (b)"; and

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1 (iii) in paragraph (5), by striking out
 2 "subsection (d)" and inserting in lieu
 3 thereof "subsection (e)".

4 **SEC. 1302. ELIMINATION OF INFLEXIBLE TERMINOLOGY**
 5 **REGARDING COORDINATION AND COMMU-**
 6 **NICATION OF DEFENSE RESEARCH ACTIVI-**
 7 **TIES.**

8 Section 2364 of title 10, United States Code, is
 9 amended—

10 (1) in subsection (b)(5), by striking out "mile-
 11 stone 0, milestone I, and milestone II decisions" and
 12 inserting in lieu thereof "acquisition program deci-
 13 sions"; and

14 (2) in subsection (c), by striking out para-
 15 graphs (2), (3), and (4) and inserting in lieu thereof
 16 the following:

17 "(2) The term 'acquisition program decisions'
 18 has the meaning given such term in regulations pre-
 19 scribed by the Secretary of Defense for the purposes
 20 of this section."

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1 **Subtitle D—Procurement Protests**

2 **PART I—PROTESTS TO THE COMPTROLLER**

3 **GENERAL**

4 **SEC. 1401. PROTEST DEFINED.**

5 Paragraph (1) of section 3551 of title 31, United
6 States Code, is amended to read as follows:

7 “(1) ‘protest’ means a written objection by an
8 interested party—

9 “(i) to a solicitation or other request by a
10 Federal agency for offers for a contract for the
11 procurement of property or services;

12 “(ii) to the cancellation of such a solicita-
13 tion or other request;

14 “(iii) to an award or proposed award of
15 such a contract; or

16 “(iv) to a termination or cancellation of an
17 award of such a contract, if the written objec-
18 tion contains an allegation that the termination
19 or cancellation is based in whole or in part on
20 improprieties concerning the award of the con-
21 tract;”.

22 **SEC. 1402. REVIEW OF PROTESTS AND EFFECT ON CON-**
23 **TRACTS PENDING DECISION.**

24 (a) PERIODS FOR CERTAIN ACTIONS.—Section 3553
25 of title 31, United States Code, is amended—

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1 (1) in subsection (b)—

2 (A) in paragraph (1), by striking out “one
3 working day of” and inserting in lieu thereof
4 “one day after”; and

5 (B) in paragraph (2)—

6 (i) in subparagraph (A), by striking
7 out “25 working days from” and inserting
8 in lieu thereof “35 days after”; and

9 (ii) in subparagraph (C), by striking
10 out “10 working days from” and inserting
11 in lieu thereof “25 days after”; and

12 (2) in subsection (c)(3), by striking out “there-
13 after” and inserting in lieu thereof “after the mak-
14 ing of such finding”.

15 (b) SUSPENSION OF PERFORMANCE.—Subsection (d)
16 of such section is amended to read as follows:

17 “(d)(1) A contractor awarded a Federal agency con-
18 tract may, during the period described in paragraph (4),
19 begin performance of the contract and engage in any relat-
20 ed activities that result in obligations being incurred by
21 the United States under the contract unless the contract-
22 ing officer responsible for the award of the contract with-
23 holds authorization to proceed with performance of the
24 contract.

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1 “(2) The contracting officer may withhold an author-
 2 ization to proceed with performance of the contract during
 3 the period described in paragraph (4) if the contracting
 4 officer determines in writing that—

5 “(A) a protest is likely to be filed; and

6 “(B) the immediate performance of the contract
 7 is not in the best interests of the United States.

8 “(3)(A) If the Federal agency awarding the contract
 9 receives notice of a protest in accordance with this section
 10 during the period described in paragraph (4)—

11 “(i) the contracting officer may not authorize
 12 performance of the contract to begin while the pro-
 13 test is pending; or

14 “(ii) if contract performance authorization to
 15 proceed was not withheld in accordance with para-
 16 graph (2) before receipt of the notice, the contract-
 17 ing officer shall immediately direct the contractor to
 18 cease performance under the contract and to sus-
 19 pend any related activities that may result in addi-
 20 tional obligations being incurred by the United
 21 States under that contract.

22 “(B) Performance and related activities suspended
 23 pursuant to subparagraph (A)(ii) by reason of a protest
 24 may not be resumed while the protest is pending.

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1 “(C) The head of the procuring activity may author-
 2 ize the performance of the contract (notwithstanding a
 3 protest of which the Federal agency has notice under this
 4 section)—

5 “(i) upon a written finding that—

6 “(I) performance of the contract is in the
 7 best interests of the United States; or

8 “(II) urgent and compelling circumstances
 9 that significantly affect interests of the United
 10 States will not permit waiting for the decision
 11 of the Comptroller General concerning the pro-
 12 test; and

13 “(ii) after the Comptroller General is notified of
 14 that finding.

15 “(4) The period referred to in paragraphs (2) and
 16 (3)(A), with respect to a contract, is the period beginning
 17 on the date of the contract award and ending on the later
 18 of—

19 “(A) the date that is 10 days after the date of
 20 the contract award; or

21 “(B) the date that is 5 days after—

22 “(i) the debriefing date offered to an un-
 23 successful offeror for any debriefing that is re-
 24 quested and, when requested, is required; or

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1 “(ii) in the case of a contract for which no
2 debriefing is required, the date on which the
3 unsuccessful offeror receives the notification of
4 contract award.”.

5 **SEC. 1403. DECISIONS ON PROTESTS.**

6 (a) **PERIODS FOR CERTAIN ACTIONS.**—Section
7 3554(a) of title 31, United States Code, is amended—

8 (1) in paragraph (1), by striking out “90 work-
9 ing days from” and inserting in lieu thereof “125
10 days after”;

11 (2) in paragraph (2), by striking out “45 cal-
12 endar days from” and inserting “65 days after”;

13 (3) by redesignating paragraph (3) as para-
14 graph (4); and

15 (4) by inserting after paragraph (2) the follow-
16 ing new paragraph (3):

17 “(3) An amendment to a protest that adds a new
18 ground of protest, if timely made, should be resolved, to
19 the maximum extent practicable, within the time limit es-
20 tablished under paragraph (1) of this subsection for final
21 decision of the initial protest. If an amended protest can-
22 not be resolved within such time limit, the Comptroller
23 General may resolve the amended protest through the ex-
24 press option under paragraph (2) of this subsection.”.

25 (b) **GAO RECOMMENDATIONS ON PROTESTS.**—

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1 (1) IMPLEMENTATION OF RECOMMENDA-
 2 TIONS.—Section 3554 of title 31, United States
 3 Code, is amended—

4 (A) in subsection (b), by adding at the end
 5 the following new paragraph:

6 “(3) If the Federal agency fails to implement fully
 7 the recommendations of the Comptroller General under
 8 this subsection with respect to a solicitation for a contract
 9 or an award or proposed award of a contract within 60
 10 days after receiving the recommendations, the head of the
 11 procuring activity responsible for that contract shall re-
 12 port such failure to the Comptroller General not later than
 13 5 working days after the end of such 60-day period.”;

14 (B) by striking out subsection (c) and in-
 15 serting in lieu thereof the following:

16 “(c)(1) If the Comptroller General determines that
 17 a solicitation for a contract or a proposed award or the
 18 award of a contract does not comply with a statute or reg-
 19 ulation, the Comptroller General may recommend that the
 20 Federal agency conducting the procurement pay to an ap-
 21 propriate interested party the costs of—

22 “(A) filing and pursuing the protest, including
 23 reasonable attorney’s fees and consultant and expert
 24 witness fees; and

25 “(B) bid and proposal preparation.

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1 “(2) No party may be paid, pursuant to a rec-
 2 ommendation made under the authority of paragraph
 3 (1)—

4 “(A) costs for consultant and expert witness
 5 fees that exceed the rates provided under section
 6 504(b)(1)(A) of title 5 for expert witnesses; or

7 “(B) costs for attorney’s fees that exceed the
 8 rates provided for attorneys under section
 9 504(b)(1)(A) of title 5.

10 “(3) If the Comptroller General recommends under
 11 paragraph (1) that a Federal agency pay costs to an inter-
 12 ested party, the Federal agency shall—

13 “(A) pay the costs promptly out of funds appro-
 14 priated by section 1304 of this title for the payment
 15 of judgments and reimburse that appropriation ac-
 16 count out of available funds or out of additional
 17 funds appropriated for such Federal agency to make
 18 such reimbursement; or

19 “(B) if the Federal agency does not make such
 20 payment, promptly report to the Comptroller Gen-
 21 eral the reasons for the failure to follow the Comp-
 22 troller General’s recommendation.

23 “(4) If the Comptroller General recommends under
 24 paragraph (1) that a Federal agency pay costs to an inter-
 25 ested party, the Federal agency and the interested party

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1 shall attempt to reach an agreement on the amount of the
 2 costs to be paid. If the Federal agency and the interested
 3 party are unable to agree on the amount to be paid, the
 4 Comptroller General may, upon the request of the inter-
 5 ested party, recommend to the Federal agency the amount
 6 of the costs that the Federal agency should pay.”; and

7 (C) by striking out subsection (e) and in-
 8 serting in lieu thereof the following:

9 “(e)(1) The Comptroller General shall report prompt-
 10 ly to the Committee on Governmental Affairs and the
 11 Committee on Appropriations of the Senate and to the
 12 Committee on Government Operations and the Committee
 13 on Appropriations of the House of Representatives any
 14 case in which a Federal agency fails to implement fully
 15 a recommendation of the Comptroller General under sub-
 16 section (b) or (c). The report shall include—

17 “(A) a comprehensive review of the pertinent
 18 procurement, including the circumstances of the fail-
 19 ure of the Federal agency to implement a rec-
 20 ommendation of the Comptroller General; and

21 “(B) a recommendation regarding whether, in
 22 order to correct an inequity or to preserve the integ-
 23 rity of the procurement process, the Congress should
 24 consider—

25 “(i) private relief legislation;

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- 1 “(ii) legislative rescission or cancellation of
- 2 funds;
- 3 “(iii) further investigation by Congress; or
- 4 “(iv) other action.

5 “(2) Not later than January 31 of each year, the
 6 Comptroller General shall transmit to the Congress a re-
 7 port containing a summary of each instance in which a
 8 Federal agency did not fully implement a recommendation
 9 of the Comptroller General under subsection (b) or (c)
 10 during the preceding year. The report shall also describe
 11 each instance in which a final decision in a protest was
 12 not rendered within 125 days after the date the protest
 13 is submitted to the Comptroller General.”.

14 (2) REQUIREMENT FOR PAYMENT IN ACCORD-
 15 ANCE WITH PRIOR GAO DETERMINATIONS.—Costs to
 16 which the Comptroller General declared an inter-
 17 ested party to be entitled under section 3554 of title
 18 31, United States Code, as in effect immediately be-
 19 fore the enactment of this Act, shall, if not paid or
 20 otherwise satisfied by the Federal agency concerned
 21 before the date of the enactment of this Act, be paid
 22 promptly from the appropriation made by section
 23 1304 of such title for the payment of judgments.
 24 The Federal agency shall reimburse that appropria-
 25 tion account out of available funds or out of addi-

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1 tional funds appropriated for such Federal agency to
 2 make such reimbursement. If the Federal agency is
 3 unable to make the reimbursement out of available
 4 funds, the head of such agency shall immediately
 5 take such action as may be necessary to transmit to
 6 Congress a request for an appropriation of addi-
 7 tional funds to make such reimbursement.

8 SEC. 1404. REGULATIONS.

9 (a) COMPUTATION OF PERIODS.—Section 3555 of
 10 title 31, United States Code, is amended—

11 (1) by redesignating subsection (b) as sub-
 12 section (d); and

13 (2) by inserting after subsection (a) the follow-
 14 ing new subsection (b):

15 “(b) The procedures shall provide that, in the com-
 16 putation of any period described in this subchapter—

17 “(1) the day of the act, event, or default from
 18 which the designated period of time begins to run
 19 not be included; and

20 “(2) the last day after such act, event, or de-
 21 fault be included, unless—

22 “(A) such last day is a Saturday, a Sun-
 23 day, or a legal holiday; or

24 “(B) in the case of a filing of a paper at
 25 the General Accounting Office or a Federal

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1 agency, such last day is a day on which weather
 2 or other conditions cause the closing of the
 3 General Accounting Office or Federal agency,
 4 in which event the next day that is not a Satur-
 5 day, Sunday, or legal holiday shall be in-
 6 cluded.”.

7 (b) **ELECTRONIC FILINGS AND DISSEMINATIONS.—**

8 Such section, as amended by subsection (a), is further
 9 amended by inserting after subsection (b) the following
 10 new subsection:

11 “(c) The Comptroller General may prescribe proce-
 12 dures for the electronic filing and dissemination of docu-
 13 ments and information required under this subchapter. In
 14 prescribing such procedures, the Comptroller General shall
 15 consider the ability of all parties to achieve electronic ac-
 16 cess to such documents and records.”.

17 (c) **REPEAL OF OBSOLETE DEADLINE.—**Subsection

18 (a) of such section is amended by striking out “Not later
 19 than January 15, 1985, the” and inserting in lieu thereof
 20 “The”.

21 **PART II—PROTESTS IN THE FEDERAL COURTS**

22 **SEC. 1431. NONEXCLUSIVITY OF REMEDIES.**

23 Section 3556 of title 31, United States Code, is
 24 amended by striking out “a district court of the United
 25 States or the United States Claims Court” in the first sen-

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1 tence and inserting in lieu thereof "the United States
2 Court of Federal Claims".

3 **SEC. 1422. JURISDICTION OF THE UNITED STATES COURT**
4 **OF FEDERAL CLAIMS.**

5 (a) **CLAIMS AGAINST THE UNITED STATES AND BID**
6 **PROTESTS.**—Section 1491 of title 28, United States Code,
7 is amended—

8 (1) by redesignating subsection (b) as sub-
9 section (e);

10 (2) in subsection (a)—

11 (A) by striking out "(a)(1)" and inserting
12 in lieu thereof "(a) **CLAIMS AGAINST THE**
13 **UNITED STATES.**—";

14 (B) in paragraph (2), by striking out "(2)
15 To" and inserting in lieu thereof "(b) **REMEDY**
16 **AND RELIEF.**—To"; and

17 (C) by striking out paragraph (3); and

18 (3) by inserting after subsection (b), as des-
19 ignated by paragraph (2)(B), the following new sub-
20 section (c):

21 "(c) **BID PROTESTS.**—(1) The United States Court
22 of Federal Claims has jurisdiction to render judgment on
23 an action by an interested party objecting to a solicitation
24 by a Federal agency for bids or proposals for a proposed
25 contract or to a proposed award or the award of a con-

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1 tract. The court has jurisdiction to entertain such an ac-
 2 tion without regard to whether suit is instituted before or
 3 after the contract is awarded.

4 “(2) To afford relief in such an action, the court may
 5 award any relief that the court considers proper, including
 6 declaratory and injunctive relief.

7 “(3) In exercising jurisdiction under this subsection,
 8 the court shall give due regard to the interests of national
 9 defense and national security and the need for expeditious
 10 resolution of the action.

11 “(4) The district courts of the United States do not
 12 have jurisdiction of any action referred to in paragraph
 13 (1).”.

14 (b) CLERICAL AMENDMENTS.—

15 (1) SECTION HEADING.—The heading of such
 16 section is amended by inserting “**BID PROTESTS;**”
 17 after “**GENERALLY;**”.

18 (2) TABLE OF SECTIONS.—The table of sections
 19 at the beginning of chapter 91 of title 28, United
 20 States Code, is amended by striking out the item re-
 21 lating to section 1491 and inserting in lieu thereof
 22 the following:

“1491. Claims against United States generally; bid protests; actions involving
 Tennessee Valley Authority.”.

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1 **PART III—PROTESTS IN PROCUREMENTS OF**
 2 **AUTOMATIC DATA PROCESSING**

3 **SEC. 1431. REVOCATION OF DELEGATIONS OF PROCURE-**
 4 **MENT AUTHORITY.**

5 Section 111(b)(3) of the Federal Property and Ad-
 6 ministrative Services Act of 1949 (40 U.S.C. 759(b)(3))
 7 is amended by inserting after the third sentence the fol-
 8 lowing: "The Administrator may revoke a delegation of
 9 authority with respect to a particular contract before or
 10 after award of the contract, except that the Administrator
 11 may revoke a delegation after the contract is awarded only
 12 when there is a finding of a violation of law or regulation
 13 in connection with the contract award."

14 **SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMIN-**
 15 **ISTRATION BOARD OF CONTRACT APPEALS.**

16 The first sentence of section 111(f)(1) of the Federal
 17 Property and Administrative Services Act of 1949 (40
 18 U.S.C. 759(f)(1)) is amended to read as follows: "Upon
 19 request of an interested party in connection with any pro-
 20 curement that is subject to this section (including any
 21 such procurement that is subject to delegation of procure-
 22 ment authority), the board of contract appeals of the Gen-
 23 eral Services Administration (hereafter in this subsection
 24 referred to as the 'board') shall review, as provided in this
 25 subsection, any decision by a contracting officer that is

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1 alleged to violate a statute, a regulation, or the conditions
2 of a delegation of procurement authority.”.

3 SEC. 1433. PERIODS FOR CERTAIN ACTIONS.

4 (a) SUSPENSION OF PROCUREMENT AUTHORITY.—

5 Section 111(f) of the Federal Property and Administrative
6 Services Act of 1949 (40 U.S.C. 759(f)) is amended—

7 (1) in paragraph (2) by adding at the end the
8 following new subparagraph:

9 “(C) If, in the case of a preaward protest, the board
10 suspends the procurement authority of the Administrator
11 or the Administrator’s delegation of procurement author-
12 ity, the Administrator or the delegate, as the case may
13 be, may continue with the procurement action up to, but
14 not including, the awarding of the contract if the Adminis-
15 trator or the delegate, as the case may be, determines that
16 it is in the best interests of the United States to do so.”;
17 and

18 (2) in paragraph (3) by striking out subpara-
19 graph (A) and inserting in lieu thereof the following:

20 “(A)(i) If, with respect to an award of a contract,
21 the board receives notice of a protest under this subsection
22 within the period described in clause (ii), the board shall,
23 at the request of an interested-party, hold a hearing to
24 determine whether the board should suspend the procure-
25 ment authority of the Administrator or the Administra-

1 tor's delegation of procurement authority for the protested
 2 procurement on an interim basis until the board can de-
 3 cide the protest.

4 “(ii) The period referred to in clause (i) is the period
 5 beginning on the date on which the contract is awarded
 6 and ending on the date that is 10 days after the date of
 7 the contract award or, if later, the date that is 5 days
 8 after—

9 “(I) the debriefing date offered to an unsuc-
 10 cessful offeror for any debriefing that is requested
 11 and, when requested, is required; or

12 “(II) in the case of a contract for which no de-
 13 briefing is required, the date on which the unsuc-
 14 cessful offeror receives the notification of contract
 15 award.

16 “(iii) The board shall hold the requested hearing
 17 within 5 days after the date of the filing of the protest
 18 or, in the case of a request for debriefing under the provi-
 19 sions of section 2305(b)(5) of title 10, United States Code,
 20 or section 303B(e) of this Act, within 5 days after the
 21 later of the date of the filing of the protest or the date
 22 of the debriefing.”.

23 (b) FINAL DECISION.—Paragraph (4)(B) of such sec-
 24 tion 111(f) is amended—

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1 (1) by striking out "45 working days" and in-
 2 serting in lieu thereof "65 days"; and

3 (2) by adding at the end the following: "An
 4 amendment which adds a new ground of protest
 5 should be resolved, to the maximum extent prac-
 6 ticable, within the time limits established for resolu-
 7 tion of the initial protest."

8 **SEC. 1434. DISMISSALS OF PROTESTS.**

9 Section 111(f)(4) of the Federal Property and Ad-
 10 ministrative Services Act of 1949 (40 U.S.C. 759(f)(4))
 11 is amended by striking out subparagraph (C) and insert-
 12 ing in lieu thereof the following:

13 "(C) The board may dismiss a protest that the board
 14 determines—

15 "(i) is frivolous;

16 "(ii) has been brought in bad faith; or

17 "(iii) does not state on its face a valid basis for
 18 protest."

19 **SEC. 1435. AWARD OF COSTS.**

20 Section 111(f)(5) is amended by striking out sub-
 21 paragraph (C) and inserting in lieu thereof the following:

22 "(C) Whenever the board makes such a determina-
 23 tion, it may, in accordance with section 1304 of title 31,
 24 United States Code, further declare an appropriate pre-
 25 vailing party to be entitled to the cost of filing and pursu-

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1 ing the protest (including reasonable attorney's fees and
2 consultant and expert witness fees), and bid and proposal
3 preparation. However, no party may be declared entitled
4 to costs for consultant and expert witness fees that exceed
5 the rates provided under section 504(b)(1)(A) of title 5,
6 United States Code, for expert witnesses or to costs for
7 attorney's fees that exceed the rates provided for attorneys
8 under section 504(b)(1)(A) of title 5, United States
9 Code.".

10 **SEC. 1436. DISMISSAL AGREEMENTS.**

11 Section 111(f)(5) of the Federal Property and Ad-
12 ministrative Services Act of 1949 (40 U.S.C. 759(f)(5))
13 is amended by adding at the end the following new sub-
14 paragraphs:

15 "(D) Any agreement that provides for the dismissal
16 of a protest and involves a direct or indirect expenditure
17 of appropriated funds shall be submitted to the board and
18 shall be made a part of the public record (subject to any
19 protective order considered appropriate by the board) be-
20 fore dismissal of the protest. If a Federal agency is a party
21 to a settlement agreement, the submission of the agree-
22 ment submitted to the board shall include a memorandum,
23 signed by the contracting officer concerned, that describes
24 in detail the procurement, the grounds for protest, the
25 Federal Government's position regarding the grounds for

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1 protest, the terms of the settlement, and the agency's posi-
 2 tion regarding the propriety of the award or proposed
 3 award of the contract at issue in the protest.

4 “(E) Payment of amounts due from an agency under
 5 subparagraph (C) or under the terms of a settlement
 6 agreement under subparagraph (D) shall be made from
 7 the appropriation made by section 1304 of title 31, United
 8 States Code, for the payment of judgments. The Federal
 9 agency concerned shall reimburse that appropriation ac-
 10 count out of funds available for the procurement.”.

11 **SEC. 1437. JURISDICTION OF DISTRICT COURTS.**

12 Section 111(f)(6)(C) of the Federal Property and Ad-
 13 ministrative Services Act of 1949 (40 U.S.C.
 14 759(f)(6)(C)) is amended by striking out “a district court
 15 of the United States or”.

16 **SEC. 1438. MATTERS TO BE COVERED IN REGULATIONS.**

17 Section 111(f) of the Federal Property and Adminis-
 18 trative Services Act of 1949 (40 U.S.C. 759(f)) is amend-
 19 ed by striking out paragraph (8) and inserting in lieu
 20 thereof the following:

21 “(7)(A) The board shall adopt and issue such rules
 22 and procedures as may be necessary to the expeditious dis-
 23 position of protests filed under the authority of this sub-
 24 section.

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1 “(B) The procedures shall provide that, in the com-
2 putation of any period described in this subsection—

3 “(i) the day of the act, event, or default from
4 which the designated period of time begins to run
5 not be included; and

6 “(ii) the last day after such act, event, or de-
7 fault be included, unless—

8 “(I) such last day is a Saturday, a Sunday,
9 or a legal holiday; or

10 “(II) in the case of a filing of a paper at
11 the board, such last day is a day on which
12 weather or other conditions cause the closing of
13 the board or Federal agency, in which event the
14 next day that is not a Saturday, Sunday, or
15 legal holiday shall be included.

16 “(C) The procedures may provide for electronic filing
17 and dissemination of documents and information required
18 under this subsection and in so providing shall consider
19 the ability of all parties to achieve electronic access to such
20 documents and records.

21 “(D) The procedures shall provide that if the board
22 expressly finds that a protest or a portion of a protest
23 is frivolous or has not been brought or pursued in good
24 faith, or that any person has willfully abused the board’s
25 process during the course of a protest, the board may im-

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1 pose appropriate procedural sanctions, including dismissal
2 of the protest.”.

3 **SEC. 1439. DEFINITIONS.**

4 (a) **PROTEST.**—Section 111(f)(9)(A) of the Federal
5 Property and Administrative Services Act of 1949 (40
6 U.S.C. 759(f)(9)(A)) is amended to read as follows:

7 “(A) the term ‘protest’ means a written objec-
8 tion by an interested party—

9 “(i) to a solicitation or other request by a
10 Federal agency for offers for a contract for the
11 procurement of property or services;

12 “(ii) to the cancellation of such a solicita-
13 tion or other request;

14 “(iii) to an award or proposed award of
15 such a contract; or

16 “(iv) to a termination or cancellation of an
17 award of such a contract, if the written objec-
18 tion contains an allegation that the termination
19 or cancellation is based in whole or in part on
20 improprieties concerning the award of the con-
21 tract;”.

22 (b) **PREVAILING PARTY.**—Section 111(f)(9) of such
23 Act is amended—

24 (1) by striking out “and” at the end of sub-
25 paragraph (A);

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1 (2) by striking out the period at the end of sub-
 2 paragraph (B) and inserting in lieu thereof “; and”;
 3 and

4 (3) by adding at the end the following new sub-
 5 paragraph:

6 “(C) the term ‘prevailing party’, with respect to
 7 a determination of the board under paragraph
 8 (5)(B) that a challenged action of a Federal agency
 9 violates a statute or regulation or the conditions of
 10 a delegation of procurement authority issued pursu-
 11 ant to this section, means a party that demonstrated
 12 such violation.”.

13 **Subtitle E—Definitions and Other** 14 **Matters**

15 **PART I—ARMED SERVICES ACQUISITIONS**

16 **SEC. 1501. DEFINITIONS.**

17 Section 2302 of title 10, United States Code, is
 18 amended—

19 (1) by striking out paragraphs (3), (4), (5), and
 20 (7);

21 (2) by redesignating paragraph (6) as para-
 22 graph (5); and

23 (3) by inserting after paragraph (2) the follow-
 24 ing:

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1 “(3) The terms ‘commercial item’, ‘full and
2 open competition’, ‘major system’,
3 ‘nondevelopmental item’, ‘procurement’, ‘procure-
4 ment system’, ‘responsible source’, ‘standards’, and
5 ‘technical data’, have the meanings given such terms
6 in section 4 of the Office of Federal Procurement
7 Policy Act (41 U.S.C. 403).

8 “(4) The term ‘simplified acquisition threshold’
9 has the meaning given that term in section 4 of the
10 Office of Federal Procurement Policy Act (41 U.S.C.
11 403), except that, in the case of any contract to be
12 awarded and performed, or purchase to be made,
13 outside the United States in support of a contin-
14 gency operation, the term means an amount equal to
15 two times the amount specified for that term in sec-
16 tion 4 of such Act.”.

17 **SEC. 1502. DELEGATION OF PROCUREMENT FUNCTIONS.**

18 (a) **CONSOLIDATION OF DELEGATION AUTHORITY.**—
19 Section 2311 of title 10, United States Code, is amended
20 to read as follows:

21 **“§ 2311. Delegation**

22 “(a) **IN GENERAL.**—Except to the extent expressly
23 prohibited by another provision of law, the head of an
24 agency may delegate, subject to his direction, to any other

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1 officer or official of that agency, any power under this
2 chapter.

3 “(b) PROCUREMENTS FOR OR WITH OTHER AGEN-
4 CIES.—Subject to subsection (a), to facilitate the procure-
5 ment of property and services covered by this chapter by
6 each agency named in section 2303 of this title for any
7 other agency, and to facilitate joint procurement by those
8 agencies—

9 “(1) the head of an agency may, within his
10 agency, delegate functions and assign responsibilities
11 relating to procurement;

12 “(2) the heads of two or more agencies may by
13 agreement delegate procurement functions and as-
14 sign procurement responsibilities from one agency to
15 another of those agencies or to an officer or civilian
16 employee of another of those agencies; and

17 “(3) the heads of two or more agencies may
18 create joint or combined offices to exercise procure-
19 ment functions and responsibilities.

20 “(c) APPROVAL OF TERMINATIONS AND REDUCTIONS
21 OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary
22 of Defense shall prescribe regulations that prohibit each
23 military department participating in a joint acquisition
24 program approved by the Under Secretary of Defense for
25 Acquisition and Technology from terminating or substan-

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1 tially reducing its participation in such program without
2 the approval of the Under Secretary.

3 “(2) The regulations shall include the following provi-
4 sions:

5 “(A) A requirement that, before any such ter-
6 mination or substantial reduction in participation is
7 approved, the proposed termination or reduction be
8 reviewed by the Joint Requirements Oversight Coun-
9 cil of the Department of Defense.

10 “(B) A provision that authorizes the Under
11 Secretary of Defense for Acquisition and Technology
12 to require a military department approved for termi-
13 nation or substantial reduction in participation in a
14 joint acquisition program to continue to provide
15 some or all of the funding necessary for the acquisi-
16 tion program to be continued in an efficient man-
17 ner.”.

18 (b) CONFORMING REPEAL.—(1) Section 2308 of title
19 10, United States Code, is repealed.

20 (2) The table of sections at the beginning of chapter
21 137 of such title is amended by striking out the item relat-
22 ed to section 2308.

23 **SEC. 1503. DETERMINATIONS AND DECISIONS.**

24 Section 2310 of title 10, United States Code, is
25 amended to read as follows:

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1 **"§ 2310. Determinations and decisions**

2 “(a) INDIVIDUAL OR CLASS DETERMINATIONS AND
3 DECISIONS AUTHORIZED.—Determinations and decisions
4 required to be made under this chapter by the head of
5 an agency may be made for an individual purchase or con-
6 tract or for a class of purchases or contracts. Such deter-
7 minations and decisions are final.

8 “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-
9 termination or decision under section 2306(e)(1), 2307(e),
10 or 2313(d)(2) of this title shall be based on a written find-
11 ing by the person making the determination or decision.
12 The finding shall set out facts and circumstances that sup-
13 port the determination or decision.

14 “(2) Each finding referred to in paragraph (1) shall
15 be final. The head of the agency making such finding shall
16 maintain a copy of the finding for not less 6 years after
17 the date of the determination or decision.”.

18 **SEC. 1504. UNDEFINITE CONTRACTUAL ACTIONS: RE-**
19 **STRICTIONS.**

20 (a) CLARIFICATION OF LIMITATION.—Subsection (b)
21 of section 2326 of title 10, United States Code, is
22 amended—

23 (1) in the subsection caption, by striking out
24 “AND EXPENDITURE”;

25 (2) in paragraph (1)(B), by striking out “or ex-
26 pended”;

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1 (3) in paragraph (2), by striking out "expend"

2 and inserting in lieu thereof "obligate"; and

3 (4) in paragraph (3)—

4 (A) by striking out "expended" and insert-
5 ing in lieu thereof "obligated"; and

6 (B) by striking out "expend" and inserting
7 in lieu thereof "obligate".

8 (b) WAIVER AUTHORITY.—Such subsection is
9 amended—

10 (1) by redesignating paragraph (4) as para-
11 graph (5); and

12 (2) by inserting after paragraph (3) the follow-
13 ing new paragraph (4):

14 "(4) The head of an agency may waive the provisions
15 of this subsection with respect to a contract of that agency
16 if such head of an agency determines that the waiver is
17 necessary in order to support a contingency operation."

18 (c) INAPPLICABILITY OF RESTRICTIONS TO CON-
19 TRACTS WITHIN THE SIMPLIFIED ACQUISITION THRESH-
20 OLD.—Section 2326(g)(1)(B) of title 10, United States
21 Code, is amended by striking out "small purchase thresh-
22 old" and inserting in lieu thereof "simplified acquisition
23 threshold".

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1 **SEC. 1505. PRODUCTION SPECIAL TOOLING AND PRODUC-**
 2 **TION SPECIAL TEST EQUIPMENT; CONTRACT**
 3 **TERMS AND CONDITIONS.**

4 (a) **REPEAL.**—Section 2329 of title 10, United States
 5 Code, is repealed.

6 (b) **TECHNICAL AMENDMENT.**—The table of sections
 7 at the beginning of chapter 137 of such title is amended
 8 by striking out the item related to section 2329.

9 **SEC. 1506. REGULATIONS FOR BIDS.**

10 Section 2381(a) of title 10, United States Code, is
 11 amended by striking out “(a) The Secretary” and all that
 12 follows through the end of paragraph (1) and inserting
 13 in lieu thereof the following:

14 “(a) The Secretary of Defense or the Secretary of
 15 a military department may—

16 “(1) prescribe regulations for the preparation,
 17 submission, and opening of bids for contracts; and”.

18 **PART II—CIVILIAN AGENCY ACQUISITIONS**

19 **SEC. 1551. DEFINITIONS.**

20 Section 309(c) of the Federal Property and Adminis-
 21 trative Services Act of 1949 (41 U.S.C. 259(c)) is amend-
 22 ed by striking out “and ‘supplies’” and inserting in lieu
 23 thereof “‘supplies’, ‘commercial item’, ‘nondevelopmental
 24 item’, and ‘simplified acquisition threshold’”.

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1 SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.

2 (a) AUTHORITY.—Title III of the Federal Property
3 and Administrative Services Act of 1949 (41 U.S.C. 251
4 et seq.) is amended—

5 (1) by redesignating sections 309 and 310 as
6 sections 312 and 313, respectively; and

7 (2) by inserting after section 308 the following
8 new section 309:

9 "DELEGATION

10 "SEC. 309. (a) IN GENERAL.—Except to the extent
11 expressly prohibited by another provision of law, an agen-
12 cy head may delegate, subject to his direction, to any other
13 officer or official of that agency, any power under this
14 title.

15 "(b) PROCUREMENTS FOR OR WITH OTHER AGEN-
16 CIES.—Subject to subsection (a), to facilitate the procure-
17 ment of property and services covered by this title by each
18 executive agency for any other executive agency, and to
19 facilitate joint procurement by those executive agencies—

20 "(1) an agency head may, within his executive
21 agency, delegate functions and assign responsibilities
22 relating to procurement;

23 "(2) the heads of two or more executive agen-
24 cies may by agreement delegate procurement func-
25 tions and assign procurement responsibilities from
26 one executive agency to another of those executive

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1 agencies or to an officer or civilian employee of an-
 2 other of those executive agencies; and

3 “(3) the heads of two or more executive agen-
 4 cies may create joint or combined offices to exercise
 5 procurement functions and responsibilities.”.

6 (b) CLERICAL AMENDMENT.—The table of contents
 7 in the first section of such Act is amended by striking out
 8 the items relating to sections 309 and 310 and inserting
 9 in lieu thereof the following:

“Sec. 309. Delegation.

“Sec. 312. Definitions.

“Sec. 313. Statutes not applicable.”.

10 SEC. 1553. DETERMINATIONS AND DECISIONS.

11 (a) IN GENERAL.—Title III of the Federal Property
 12 and Administrative Services Act of 1949 (41 U.S.C. 251
 13 et seq.), as amended by section 1552, is further amended
 14 by inserting after section 309 the following new section
 15 310:

16 “DETERMINATIONS AND DECISIONS

17 “SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINA-
 18 TIONS AND DECISIONS AUTHORIZED.—Determinations
 19 and decisions required to be made under this title by an
 20 agency head may be made for an individual purchase or
 21 contract or for a class of purchases or contracts. Such de-
 22 terminations and decisions are final.

23 “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-
 24 termination under section 305(e) shall be based on a writ-

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1 ten finding by the person making the determination or de-
 2 cision. The finding shall set out facts and circumstances
 3 that support the determination or decision.

4 “(2) Each finding referred to in paragraph (1) shall
 5 be final. The agency head making such finding shall main-
 6 tain a copy of the finding for not less 6 years after the
 7 date of the determination or decision.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
 9 in the first section of such Act, as amended by section
 10 1552, is further amended by inserting after the item relat-
 11 ing to section 309 the following:

“Sec. 310. Determinations and decisions.”.

12 **SEC. 1554. COOPERATIVE PURCHASING.**

13 Subsection (b) of section 201 of the Federal Property
 14 and Administrative Services Act of 1949 (40 U.S.C. 481),
 15 is amended to read as follows:

16 “(b)(1) The Administrator shall, as far as prac-
 17 ticable, provide any of the services specified in subsection
 18 (a) of this section to any other Federal agency, mixed-
 19 ownership Government corporation (as defined in section
 20 9101 of title 31, United States Code), or the District of
 21 Columbia, upon its request.

22 “(2)(A) The Administrator may provide for the use
 23 of Federal supply schedules or other contracts by any of
 24 the following entities upon request:

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1 “(i) A State, any department or agency of a
2 State, and any political subdivision of a State, in-
3 cluding a local government.

4 “(ii) The District of Columbia.

5 “(iii) The Commonwealth of Puerto Rico.

6 “(iv) The government of an Indian tribe (as de-
7 fined in section 4(e) of the Indian Self-Determina-
8 tion and Education Assistance Act (25 U.S.C.
9 450b(e))).

10 “(B) Subparagraph (A) may not be construed to au-
11 thorize an entity referred to in that subparagraph to order
12 existing stock or inventory from federally owned and oper-
13 ated, or federally owned and contractor operated, supply
14 depots, warehouses, or similar facilities.

15 “(3)(A) Upon the request of a qualified nonprofit
16 agency for the blind or other severely handicapped that
17 is to provide a commodity or service to the Federal Gov-
18 ernment under the Javits-Wagner-O'Day Act, the Admin-
19 istrator may provide any of the services specified in sub-
20 section (a) to such agency to the extent practicable.

21 “(B) A nonprofit agency receiving services under the
22 authority of subparagraph (A) shall use the services di-
23 rectly in making or providing an approved commodity or
24 approved service to the Federal Government.

25 “(C) In this paragraph:

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1 “(i) The term ‘qualified nonprofit agency for
2 the blind or other severely handicapped’ means—

3 “(I) a qualified nonprofit agency for the
4 blind, as defined in section 5(3) of the Javits-
5 Wagner-O’Day Act (41 U.S.C. 48b(3)); and

6 “(II) a qualified nonprofit agency for other
7 severely handicapped, as defined in section 5(4)
8 of such Act (41 U.S.C. 48b(4)).

9 “(ii) The terms ‘approved commodity’ and ‘ap-
10 proved service’ mean a commodity and a service, re-
11 spectively, that has been determined by the Commit-
12 tee for Purchase from the Blind and Other Severely
13 Handicapped under section 2 of the Javits-Wagner-
14 O’Day Act (41 U.S.C. 47) to be suitable for pro-
15 curement by the Federal Government.

16 “(iii) The term ‘Javits-Wagner-O’Day Act’
17 means the Act entitled ‘An Act to create a Commit-
18 tee on Purchases of Blind-made Products, and for
19 other purposes’, approved June 25, 1938 (41 U.S.C.
20 46-48c), commonly referred to as the Wagner-
21 O’Day Act, that was revised and reenacted in the
22 Act of June 23, 1971 (85 Stat. 77), commonly re-
23 ferred to as the Javits-Wagner-O’Day Act.”.

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1 **TITLE II—CONTRACT**
 2 **ADMINISTRATION**
 3 **Subtitle A—Contract Payment**
 4 **PART I—ARMED SERVICES ACQUISITIONS**

5 **SEC. 2001. CONTRACT FINANCING.**

6 (a) REORGANIZATION OF PRINCIPAL AUTHORITY
 7 PROVISION.—Section 2307 of title 10, United States
 8 Code, is amended—

9 (1) by striking out the section heading and in-
 10 serting in lieu thereof the following:

11 **"§ 2307. Contract financing";**

12 (2) by striking out "(a) The head of an agency"
 13 and inserting in lieu thereof "(b) PAYMENT AU-
 14 THORITY.—The head of an agency";

15 (3) by striking out "(b) Payments" and insert-
 16 ing in lieu thereof "(d) PAYMENT AMOUNT.—Pay-
 17 ments";

18 (4) by striking out "(c) Advance payments" and
 19 inserting in lieu thereof "(e) SECURITY FOR AD-
 20 VANCE PAYMENTS.—Advance payments";

21 (5) by striking out "(d)(1) The Secretary of
 22 Defense" and inserting in lieu thereof "(f) CONDI-
 23 TIONS FOR PROGRESS PAYMENTS.—(1) The Sec-
 24 retary of Defense"; and

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1 (6) by striking out "(e)(1) In any case" and in-
 2 serting in lieu thereof "(h) ACTION IN CASE OF
 3 FRAUD.—(1) In any case".

4 (b) FINANCING POLICY.—Such section, as amended
 5 by subsection (a), is further amended by inserting after
 6 the section heading the following new subsection (a):

7 "(a) POLICY.—Payments authorized under this sec-
 8 tion and made for financing purposes should be made peri-
 9 odically or, when appropriate, on an advance basis and
 10 should be so made in a timely manner to facilitate contract
 11 performance while protecting the security interests of the
 12 Government. Government financing shall be provided only
 13 to the extent necessary to ensure prompt and efficient per-
 14 formance and only after the availability of private financ-
 15 ing is considered. A contractor's use of funds received as
 16 contract financing and the contractor's financial condition
 17 shall be monitored. If the contractor is a small business
 18 concern, special attention shall be given to meeting the
 19 contractor's financial need."

20 (c) PERFORMANCE-BASED PAYMENTS.—Such sec-
 21 tion, as amended by subsection (a), is further amended
 22 by inserting after subsection (b) the following new sub-
 23 section (c):

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1 “(c) **PERFORMANCE-BASED PAYMENTS.**—Whenever
2 practicable, payments under subsection (b) shall be made
3 on any of the following bases:

4 “(1) Performance measured by objective, quan-
5 tifiable methods such as receipt of items by the Fed-
6 eral Government, work measurement, or statistical
7 process controls.

8 “(2) Accomplishment of events defined in the
9 program management plan.

10 “(3) Other quantifiable measures of results.”.

11 (d) **TERMINOLOGY CORRECTION.**—Such section, as
12 amended by subsection (a)(2), is further amended in sub-
13 section (b)(2) by striking out “bid”.

14 (e) **EFFECTIVE DATE OF LIEN RELATED TO AD-
15 VANCE PAYMENTS.**—Such section, as amended by sub-
16 section (a)(4), is further amended in subsection (e) by in-
17 serting before the period at the end of the third sentence
18 the following: “and is effective immediately upon the first
19 advancement of funds without filing, notice, or any other
20 action by the United States”.

21 (f) **CONDITIONS FOR PROGRESS PAYMENTS.**—Such
22 section, as amended by subsection (a)(5), is further
23 amended in subsection (f)—

24 (1) in the first sentence of paragraph (1), by
25 striking out “work, which” and all that follows

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1 through "accomplished" and inserting in lieu thereof
2 "work accomplished that meets standards estab-
3 lished under the contract"; and

4 (2) by striking out paragraph (3) and inserting
5 in lieu thereof the following:

6 "(3) This subsection applies to a contract for an
7 amount equal to or greater than the simplified acquisition
8 threshold."

9 (g) NAVY CONTRACTS.—Such section, as amended by
10 subsection (a)(5), is further amended by inserting after
11 subsection (f) the following new subsection (g):

12 "(g) CERTAIN NAVY CONTRACTS.—(1) The Sec-
13 retary of the Navy shall provide that the rate for progress
14 payments on any contract awarded by the Secretary for
15 repair, maintenance, or overhaul of a naval vessel shall
16 be not less than—

17 "(A) 95 percent, in the case of firms considered
18 to be small businesses; and

19 "(B) 90 percent, in the case of all other firms.

20 "(2) The Secretary of the Navy may advance to pri-
21 vate salvage companies such funds as the Secretary con-
22 siders necessary to provide for the immediate financing
23 of salvage operations. Advances under this paragraph shall
24 be made on terms that the Secretary considers adequate
25 for the protection of the United States."

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1 (h) CONFORMING AND CLERICAL AMENDMENTS.—

2 (1) CROSS REFERENCE.—Such section, as
 3 amended by subsection (a), is further amended in
 4 subsections (d) and (e) by striking out “subsection
 5 (a)” and inserting in lieu thereof “subsection (b)”.

6 (2) TABLE OF CONTENTS.—The table of sec-
 7 tions at the beginning of chapter 137 of title 10,
 8 United States Code, is amended by striking out the
 9 item relating to section 2307 and inserting in lieu
 10 thereof the following:

“2307. Contract financing.”.

11 (i) REPEAL OF SUPERSEDED PROVISIONS.—

12 (1) PROGRESS PAYMENTS UNDER CERTAIN
 13 NAVY CONTRACTS.—

14 (A) REPEAL.—Section 7312 of title 10,
 15 United States Code, is repealed.

16 (B) CLERICAL AMENDMENT.—The table of
 17 sections at the beginning of chapter 633 of such
 18 title is amended by striking out the item relat-
 19 ing to section 7312.

20 (2) ADVANCEMENT OF PAYMENTS FOR NAVY
 21 SALVAGE OPERATIONS.—

22 (A) REPEAL.—Section 7364 of such title is
 23 repealed.

24 (B) CLERICAL AMENDMENT.—The table of
 25 sections at the beginning of chapter 637 of such

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1 title is amended by striking out the item relat-
 2 ing to section 7364.

3 (3) PARTIAL PAYMENTS UNDER NAVY
 4 CONTRACTS—

5 (A) REPEAL.—Section 7521 of such title is
 6 repealed.

7 (B) CLERICAL AMENDMENT.—The table of
 8 sections at the beginning of chapter 645 of such
 9 title is amended by striking out the item relat-
 10 ing to section 7521.

11 SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.

12 (a) REPEAL.—Section 2355 of title 10, United States
 13 Code, is repealed.

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 at the beginning of chapter 139 of such title is amended
 16 by striking out the item relating to section 2355.

17 PART II—CIVILIAN AGENCY ACQUISITIONS

18 SEC. 2051. CONTRACT FINANCING.

19 (a) REORGANIZATION OF PRINCIPAL AUTHORITY
 20 PROVISION.—Section 305 of the Federal Property and
 21 Administrative Services Act of 1949 (41 U.S.C. 255) is
 22 amended—

23 (1) by striking out the section heading and in-
 24 serting in lieu thereof the following:

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1 "CONTRACT FINANCING";

2 (2) by striking out "(a) Any executive agency"
3 and inserting in lieu thereof "(b) PAYMENT AU-
4 THORITY.—Any executive agency";

5 (3) by striking out "(b) Payments" and insert-
6 ing in lieu thereof "(d) PAYMENT AMOUNT.—Pay-
7 ments"; and

8 (4) by striking out "(c) Advance payments" and
9 inserting in lieu thereof "(e) SECURITY FOR AD-
10 VANCE PAYMENTS.—Advance payments".

11 (b) FINANCING POLICY.—Such section, as amended
12 by subsection (a), is further amended by inserting after
13 the section heading the following new subsection (a):

14 "(a) POLICY.—Payments authorized under this sec-
15 tion and made for financing purposes should be made peri-
16 odically or, when appropriate, on an advance basis and
17 should be so made in a timely manner to facilitate contract
18 performance while protecting the security interests of the
19 Government. Government financing shall be provided only
20 to the extent necessary to ensure prompt and efficient per-
21 formance and only after the availability of private financ-
22 ing is considered. A contractor's use of funds received as
23 contract financing and the contractor's financial condition
24 shall be monitored. If the contractor is a small business

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1 concern, special attention shall be given to meeting the
2 contractor's financial need."

3 (c) PERFORMANCE-BASED PAYMENTS.—Such sec-
4 tion, as amended by subsection (a), is further amended
5 by inserting after subsection (b) the following new sub-
6 section (c):

7 "(c) PERFORMANCE-BASED PAYMENTS.—Whenever
8 practicable, payments under subsection (b) shall be made
9 on any of the following bases:

10 "(1) Performance measured by objective, quan-
11 tifiable methods such as receipt of items by the Fed-
12 eral Government, work measurement, or statistical
13 process controls.

14 "(2) Accomplishment of events defined in the
15 program management plan.

16 "(3) Other quantifiable measures of results."

17 (d) TERMINOLOGY CORRECTION.—Such section, as
18 amended by subsection (a)(2), is further amended in sub-
19 section (b)(2) by striking out "bid".

20 (e) EFFECTIVE DATE OF LIEN RELATED TO AD-
21 VANCE PAYMENTS.—Such section, as amended by sub-
22 section (a)(4), is further amended in subsection (e) by in-
23 serting before the period at the end of the third sentence
24 the following: "and is effective immediately upon the first

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1 advancement of funds without filing, notice, or any other
2 action by the United States”.

3 (f) REVISION OF CIVILIAN AGENCY PROVISION TO
4 ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-
5 MENTS.—

6 (1) IN GENERAL.—Such section, as amended by
7 subsection (a), is further amended by adding at the
8 end the following:

9 “(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1)
10 The agency head shall ensure that any payment for work
11 in progress (including materials, labor, and other items)
12 under a contract of an executive agency that provides for
13 such payments is commensurate with the work accom-
14 plished that meets standards established under the con-
15 tract. The contractor shall provide such information and
16 evidence as the agency head determines necessary to per-
17 mit the agency head to carry out the preceding sentence.

18 “(2) The agency head shall ensure that progress pay-
19 ments referred to in paragraph (1) are not made for more
20 than 80 percent of the work accomplished under the con-
21 tract so long as the agency head has not made the contrac-
22 tual terms, specifications, and price definite.

23 “(3) This subsection applies to a contract for an
24 amount equal to or greater than the simplified acquisition
25 threshold.

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1 “(g) ACTION IN CASE OF FRAUD.—(1) In any case
2 in which the remedy coordination official of an executive
3 agency finds that there is substantial evidence that the
4 request of a contractor for advance, partial, or progress
5 payment under a contract awarded by that executive agen-
6 cy is based on fraud, the remedy coordination official shall
7 recommend that the agency head reduce or suspend fur-
8 ther payments to such contractor.

9 “(2) An agency head receiving a recommendation
10 under paragraph (1) in the case of a contractor's request
11 for payment under a contract shall determine whether
12 there is substantial evidence that the request is based on
13 fraud. Upon making such a determination, the agency
14 head may reduce or suspend further payments to the con-
15 tractor under such contract.

16 “(3) The extent of any reduction or suspension of
17 payments by an agency head under paragraph (2) on the
18 basis of fraud shall be reasonably commensurate with the
19 anticipated loss to the United States resulting from the
20 fraud.

21 “(4) A written justification for each decision of the
22 agency head whether to reduce or suspend payments
23 under paragraph (2), and for each recommendation re-
24 ceived by the agency head in connection with such deci-

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1 sion, shall be prepared and be retained in the files of the
2 executive agency.

3 “(5) Each agency head shall prescribe procedures to
4 ensure that, before the agency head decides to reduce or
5 suspend payments in the case of a contractor under para-
6 graph (2), the contractor is afforded notice of the pro-
7 posed reduction or suspension and an opportunity to sub-
8 mit matters to the head of the agency in response to such
9 proposed reduction or suspension.”

10 “(6) Not later than 180 days after the date on which
11 an agency head reduces or suspends payments to a con-
12 tractor under paragraph (2), the remedy coordination offi-
13 cial of the executive agency shall—

14 “(A) review the determination of fraud on
15 which the reduction or suspension is based; and

16 “(B) transmit a recommendation to the agency
17 head whether the suspension or reduction should
18 continue.

19 “(7) Each agency head who receives recommenda-
20 tions made by a remedy coordination official of the execu-
21 tive agency to reduce or suspend payments under para-
22 graph (2) during a fiscal year shall prepare for such year
23 a report that contains the recommendations, the actions
24 taken on the recommendations and the reasons for such
25 actions, and an assessment of the effects of such actions

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1 on the Federal Government. Any such report shall be
2 available to any Member of Congress upon request.

3 “(8) An agency head may not delegate responsibilities
4 under this subsection to any person in a position below
5 level IV of the Executive Schedule.

6 “(9) In this subsection, the term ‘remedy coordina-
7 tion official’, with respect to an executive agency, means
8 the person or entity in that executive agency who coordi-
9 nates within that executive agency the administration of
10 criminal, civil, administrative, and contractual remedies
11 resulting from investigations of fraud or corruption related
12 to procurement activities.”.

13 (2) RELATIONSHIP TO PROMPT PAYMENT RE-
14 QUIREMENTS.—The amendments made by para-
15 graph (1) are not intended to impair or modify pro-
16 cedures required by the provisions of chapter 39 of
17 title 31, United States Code, and the regulations is-
18 sued pursuant to such provisions of law, that relate
19 to progress payment requests, as such procedures
20 are in effect on the date of the enactment of this
21 Act.

22 (g) CONFORMING AND CLERICAL AMENDMENTS.—

23 (1) REFERENCE.—Section 305 of the Federal
24 Property and Administrative Services Act of 1949,
25 as amended by subsection (a), is further amended in

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1 subsections (d) and (e) by striking out "subsection
2 (a)" and inserting in lieu thereof "subsection (b)".

3 (2) TABLE OF CONTENTS.—The table of con-
4 tents in the first section of such Act is amended by
5 striking out the item relating to section 305 and in-
6 serting in lieu thereof the following:

"Sec. 305. Contract financing."

7 Subtitle B—Cost Principles

8 PART I—ARMED SERVICES ACQUISITIONS

9 SEC. 2101. ALLOWABLE CONTRACT COSTS.

10 (a) COMPTROLLER GENERAL EVALUATION.—Section
11 2324 is amended by striking out subsection (l).

12 (b) COVERED CONTRACT DEFINED.—Subsection (m)
13 of section 2324 of title 10, United States Code, is amend-
14 ed to read as follows:

15 "(1)(1) In this section, the term 'covered contract'
16 means a contract for an amount in excess of \$500,000
17 that is entered into by the Department of Defense, except
18 that such term does not include a fixed-price contract
19 without cost incentives.

20 "(2) Effective on October 1 of each year that is divis-
21 ible by 5, the amount set forth in paragraph (1) shall be
22 adjusted to the amount that is equal to the fiscal year
23 1994 constant dollar value of the amount set forth. An
24 amount, as so adjusted, that is not evenly divisible by
25 \$50,000 shall be rounded to the nearest multiple of

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1 \$50,000. In the case of an amount that is evenly divisible
 2 by \$25,000 but is not evenly divisible by \$50,000, the
 3 amount shall be rounded to the next higher multiple of
 4 \$50,000.”.

5 **SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMER-**
 6 **GENCY PERIODS.**

7 (a) **REPEAL.**—Section 2382 of title 10, United States
 8 Code, is repealed.

9 (b) **CLERICAL AMENDMENT.**—The table of sections
 10 at the beginning of chapter 141 of such title is amended
 11 by striking out the item relating to section 2382.

12 **PART II—CIVILIAN AGENCY ACQUISITIONS**

13 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

14 (a) **REVISION OF CIVILIAN AGENCY PROVISION TO**
 15 **ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.**—
 16 Section 306 of the Federal Property and Administrative
 17 Services Act of 1949 (41 U.S.C. 256) is amended to read
 18 as follows:

19 **“ALLOWABLE COSTS**

20 **“SEC. 306. (a) INDIRECT COST THAT VIOLATES A**
 21 **FAR COST PRINCIPLE.**—The head of an executive agency
 22 shall require that a covered contract provide that if the
 23 contractor submits to the executive agency a proposal for
 24 settlement of indirect costs incurred by the contractor for
 25 any period after such costs have been accrued and if that
 26 proposal includes the submission of a cost which is unal-

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1 lowable because the cost violates a cost principle in the
2 Federal Acquisition Regulation or an executive agency's
3 supplement to the Federal Acquisition Regulation, the cost
4 shall be disallowed.

5 “(b) PENALTY FOR VIOLATION OF COST PRIN-
6 CIPLE.—(1) If the agency head determines that a cost
7 submitted by a contractor in its proposal for settlement
8 is expressly unallowable under a cost principle referred to
9 in subsection (a) that defines the allowability of specific
10 selected costs, the agency head shall assess a penalty
11 against the contractor in an amount equal to—

12 “(A) the amount of the disallowed cost allo-
13 cated to covered contracts for which a proposal for
14 settlement of indirect costs has been submitted; plus

15 “(B) interest (to be computed based on regula-
16 tions issued by the agency head) to compensate the
17 United States for the use of any funds which a con-
18 tractor has been paid in excess of the amount to
19 which the contractor was entitled.

20 “(2) If the agency head determines that a proposal
21 for settlement of indirect costs submitted by a contractor
22 includes a cost determined to be unallowable in the case
23 of such contractor before the submission of such proposal,
24 the agency head shall assess a penalty against the contrac-
25 tor in an amount equal to two times the amount of the

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1 disallowed cost allocated to covered contracts for which a
2 proposal for settlement of indirect costs has been submit-
3 ted.

4 “(c) WAIVER OF PENALTY.—In accordance with the
5 Federal Acquisition Regulation, the agency head may
6 waive a penalty under subsection (b) in the case of a con-
7 tractor’s proposal for settlement of indirect costs when—

8 “(1) the contractor withdraws the proposal be-
9 fore the formal initiation of an audit of the proposal
10 by the Federal Government and resubmits a revised
11 proposal;

12 “(2) the amount of unallowable costs subject to
13 the penalty is insignificant; or

14 “(3) the contractor demonstrates, to the con-
15 tracting officer’s satisfaction, that—

16 “(A) it has established appropriate policies
17 and personnel training and an internal control
18 and review system that provide assurances that
19 unallowable costs subject to penalties are pre-
20 cluded from being included in the contractor’s
21 proposal for settlement of indirect costs; and

22 “(B) the unallowable costs subject to the
23 penalty were inadvertently incorporated into the
24 proposal.

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1 “(d) APPLICABILITY OF CONTRACT DISPUTES PRO-
2 CEDURE TO DISALLOWANCE OF COST AND ASSESSMENT
3 OF PENALTY.—An action of an agency head under sub-
4 section (a) or (b)—

5 “(1) shall be considered a final decision for the
6 purposes of section 6 of the Contract Disputes Act
7 of 1978 (41 U.S.C. 605); and

8 “(2) is appealable in the manner provided in
9 section 7 of such Act.

10 “(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The
11 following costs are not allowable under a covered contract:

12 “(A) Costs of entertainment, including amuse-
13 ment, diversion, and social activities, and any costs
14 directly associated with such costs (such as tickets
15 to shows or sports events, meals, lodging, rentals,
16 transportation, and gratuities).

17 “(B) Costs incurred to influence (directly or in-
18 directly) legislative action on any matter pending be-
19 fore Congress or a State legislature.

20 “(C) Costs incurred in defense of any civil or
21 criminal fraud proceeding or similar proceeding (in-
22 cluding filing of any false certification) brought by
23 the United States where the contractor is found lia-
24 ble or had pleaded nolo contendere to a charge of

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1 fraud or similar proceeding (including filing of a
2 false certification).

3 "(D) Payments of fines and penalties resulting
4 from violations of, or failure to comply with, Fed-
5 eral, State, local, or foreign laws and regulations, ex-
6 cept when incurred as a result of compliance with
7 specific terms and conditions of the contract or spe-
8 cific written instructions from the contracting officer
9 authorizing in advance such payments in accordance
10 with the Federal Acquisition Regulation.

11 "(E) Costs of membership in any social, dining,
12 or country club or organization.

13 "(F) Costs of alcoholic beverages.

14 "(G) Contributions or donations, regardless of
15 the recipient.

16 "(H) Costs of advertising designed to promote
17 the contractor or its products.

18 "(I) Costs of promotional items and memora-
19 bilia, including models, gifts, and souvenirs.

20 "(J) Costs for travel by commercial aircraft
21 which exceed the amount of the standard commercial
22 fare.

23 "(K) Costs incurred in making any payment
24 (commonly known as a 'golden parachute payment')
25 which is—

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1 “(i) in an amount in excess of the normal
2 severance pay paid by the contractor to an em-
3 ployee upon termination of employment; and

4 “(ii) is paid to the employee contingent
5 upon, and following, a change in management
6 control over, or ownership of, the contractor or
7 a substantial portion of the contractor's assets.

8 “(L) Costs of commercial insurance that pro-
9 tects against the costs of the contractor for correc-
10 tion of the contractor's own defects in materials or
11 workmanship.

12 “(M) Costs of severance pay paid by the con-
13 tractor to foreign nationals employed by the contrac-
14 tor under a service contract performed outside the
15 United States, to the extent that the amount of sev-
16 erance pay paid in any case exceeds the amount paid
17 in the industry involved under the customary or pre-
18 vailing practice for firms in that industry providing
19 similar services in the United States, as determined
20 in accordance with the Federal Acquisition Regula-
21 tion.

22 “(N) Costs of severance pay paid by the con-
23 tractor to a foreign national employed by the con-
24 tractor under a service contract performed in a for-
25 eign country if the termination of the employment of

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1 the foreign national is the result of the closing of,
2 or the curtailment of activities at, a United States
3 facility in that country at the request of the govern-
4 ment of that country.

5 “(O) Costs incurred by a contractor in connec-
6 tion with any criminal, civil, or administrative pro-
7 ceeding commenced by the United States or a State,
8 to the extent provided in subsection (k).

9 “(2)(A) Subject to the availability of appropriations,
10 the head of an executive agency, in awarding a covered
11 contract, may waive in accordance with the Federal Acqui-
12 sition Regulation the application of the provisions of para-
13 graphs (1)(M) and (1)(N) to that contract if the agency
14 head determines that—

15 “(i) the application of such provisions to the
16 contract would adversely affect the continuation of a
17 program, project, or activity that provides significant
18 support services for employees of the executive agen-
19 cy posted outside the United States;

20 “(ii) the contractor has taken (or has estab-
21 lished plans to take) appropriate actions within the
22 contractor’s control to minimize the amount and
23 number of incidents of the payment of severance pay
24 by the contractor to employees under the contract
25 who are foreign nationals; and

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1 “(iii) the payment of severance pay is necessary
2 in order to comply with a law that is generally appli-
3 cable to a significant number of businesses in the
4 country in which the foreign national receiving the
5 payment performed services under the contract or is
6 necessary to comply with a collective bargaining
7 agreement.

8 “(B) The head of the executive agency concerned
9 shall include in the solicitation for a covered contract a
10 statement indicating—

11 “(i) that a waiver has been granted under sub-
12 paragraph (A) for the contract; or

13 “(ii) whether the agency head will consider
14 granting such a waiver, and, if the agency head will
15 consider granting a waiver, the criteria to be used in
16 granting the waiver.

17 “(C) The agency head shall make the final determina-
18 tion regarding whether to grant a waiver under subpara-
19 graph (A) with respect to a covered contract before award
20 of the contract.

21 “(3) The head of each executive agency shall imple-
22 ment this section with respect to contracts of that execu-
23 tive agency in accordance with the Federal Acquisition
24 Regulation. The provisions of the Federal Acquisition ap-

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1 plicable to the implementation of this section may include
 2 definitions, exclusions, limitations, and qualifications.

3 “(f) REQUIRED REGULATIONS.—(1) The Federal Ac-
 4 quisition Regulation referred to in section 25(c)(1) of the
 5 Office of Federal Procurement Policy Act (41 U.S.C.
 6 421(c)(1)) shall contain provisions on the allowability of
 7 contractor costs. Such provisions shall define in detail and
 8 in specific terms those costs which are unallowable, in
 9 whole or in part, under covered contracts. The regulations
 10 shall, at a minimum, clarify the cost principles applicable
 11 to contractor costs of the following:

12 “(A) Air shows.

13 “(B) Membership in civic, community, and pro-
 14 fessional organizations.

15 “(C) Recruitment.

16 “(D) Employee morale and welfare.

17 “(E) Actions to influence (directly or indirectly)
 18 executive branch action on regulatory and contract
 19 matters (other than costs incurred in regard to con-
 20 tract proposals pursuant to solicited or unsolicited
 21 bids).

22 “(F) Community relations.

23 “(G) Dining facilities.

24 “(H) Professional and consulting services, in-
 25 cluding legal services.

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- 1 “(I) Compensation.
- 2 “(J) Selling and marketing.
- 3 “(K) Travel.
- 4 “(L) Public relations.
- 5 “(M) Hotel and meal expenses.
- 6 “(N) Expense of corporate aircraft.
- 7 “(O) Company-furnished automobiles.
- 8 “(P) Advertising.
- 9 “(2) The Federal Acquisition Regulation shall require
- 10 that a contracting officer not resolve any questioned costs
- 11 until the contracting officer has obtained—
- 12 “(A) adequate documentation with respect to
- 13 such costs; and
- 14 “(B) the opinion of the executive agency’s con-
- 15 tract auditor on the allowability of such costs.
- 16 “(3) The Federal Acquisition Regulation shall pro-
- 17 vide that, to the maximum extent practicable, an executive
- 18 agency’s contract auditor be present at any negotiation or
- 19 meeting with the contractor regarding a determination of
- 20 the allowability of indirect costs of the contractor.
- 21 “(4) The Federal Acquisition Regulation shall require
- 22 that all categories of costs designated in the report of an
- 23 executive agency’s contract auditor as questioned with re-
- 24 spect to a proposal for settlement be resolved in such a

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1 manner that the amount of the individual questioned costs
2 that are paid will be reflected in the settlement.

3 “(g) APPLICABILITY OF REQUIRED REGULATIONS TO
4 SUBCONTRACTORS.—The regulations prescribed to carry
5 out subsections (e) and (f)(1) shall require, to the maxi-
6 mum extent practicable, that such regulations apply to all
7 subcontractors of a covered contract.

8 “(h) CONTRACTOR CERTIFICATION REQUIRED.—(1)
9 A proposal for settlement of indirect costs applicable to
10 a covered contract shall include a certification by an offi-
11 cial of the contractor that, to the best of the certifying
12 official's knowledge and belief, all indirect costs included
13 in the proposal are allowable. Any such certification shall
14 be in a form prescribed by the agency head concerned.

15 “(2) The agency head concerned may, in an excep-
16 tional case, waive the requirement for certification under
17 paragraph (1) in the case of any contract if the agency
18 head—

19 “(A) determines in such case that it would be
20 in the interest of the United States to waive such
21 certification; and

22 “(B) states in writing the reasons for that de-
23 termination and makes such determination available
24 to the public.

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1 “(i) PENALTIES FOR SUBMISSION OF COST KNOWN
2 AS NOT ALLOWABLE.—The submission to an executive
3 agency of a proposal for settlement of costs for any period
4 after such costs have been accrued that includes a cost
5 that is expressly specified by statute or regulation as being
6 unallowable, with the knowledge that such cost is unallow-
7 able, shall be subject to the provisions of section 287 of
8 title 18, United States Code, and section 3729 of title 31,
9 United States Code.

10 “(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—
11 In a proceeding before a board of contract appeals, the
12 United States Court of Federal Claims, or any other Fed-
13 eral court in which the reasonableness of indirect costs for
14 which a contractor seeks reimbursement from the United
15 States is in issue, the burden of proof shall be upon the
16 contractor to establish that those costs are reasonable.

17 “(k) PROCEEDING COSTS NOT ALLOWABLE.—(1)
18 Except as otherwise provided in this subsection, costs in-
19 curred by a contractor in connection with any criminal,
20 civil, or administrative proceeding commenced by the
21 United States or a State are not allowable as reimbursable
22 costs under a covered contract if the proceeding (A) re-
23 lates to a violation of, or failure to comply with, a Federal
24 or State statute or regulation, and (B) results in a disposi-
25 tion described in paragraph (2).

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1 “(2) A disposition referred to in paragraph (1)(B) is
2 any of the following:

3 “(A) In the case of a criminal proceeding, a
4 conviction (including a conviction pursuant to a plea
5 of nolo contendere) by reason of the violation or fail-
6 ure referred to in paragraph (1).

7 “(B) In the case of a civil or administrative
8 proceeding involving an allegation of fraud or similar
9 misconduct, a determination of contractor liability
10 on the basis of the violation or failure referred to in
11 paragraph (1).

12 “(C) In the case of any civil or administrative
13 proceeding, the imposition of a monetary penalty by
14 reason of the violation or failure referred to in para-
15 graph (1).

16 “(D) A final decision—

17 “(i) to debar or suspend the contractor,

18 “(ii) to rescind or void the contract, or

19 “(iii) to terminate the contract for default,
20 by reason of the violation or failure referred to in
21 paragraph (1).

22 “(E) A disposition of the proceeding by consent
23 or compromise if such action could have resulted in
24 a disposition described in subparagraph (A), (B),
25 (C), or (D).

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1 “(3) In the case of a proceeding referred to in para-
2 graph (1) that is commenced by the United States and
3 is resolved by consent or compromise pursuant to an
4 agreement entered into by a contractor and the United
5 States, the costs incurred by the contractor in connection
6 with such proceeding that are otherwise not allowable as
7 reimbursable costs under such paragraph may be allowed
8 to the extent specifically provided in such agreement.

9 “(4) In the case of a proceeding referred to in para-
10 graph (1) that is commenced by a State, the agency head
11 that awarded the covered contract involved in the proceed-
12 ing may allow the costs incurred by the contractor in con-
13 nection with such proceeding as reimbursable costs if the
14 agency head determines, under regulations prescribed by
15 such agency head, that the costs were incurred as a result
16 of (A) a specific term or condition of the contract, or (B)
17 specific written instructions of the agency.

18 “(5)(A) Except as provided in subparagraph (C),
19 costs incurred by a contractor in connection with a crimi-
20 nal, civil, or administrative proceeding commenced by the
21 United States or a State in connection with a covered con-
22 tract may be allowed as reimbursable costs under the con-
23 tract if such costs are not disallowable under paragraph
24 (1), but only to the extent provided in subparagraph (B).

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1 “(B)(i) The amount of the costs allowable under sub-
2 paragraph (A) in any case may not exceed the amount
3 equal to 80 percent of the amount of the costs incurred,
4 to the extent that such costs are determined to be other-
5 wise allowable and allocable under the Federal Acquisition
6 Regulation.

7 “(ii) Regulations issued for the purpose of clause (i)
8 shall provide for appropriate consideration of the complex-
9 ity of procurement litigation, generally accepted principles
10 governing the award of legal fees in civil actions involving
11 the United States as a party, and such other factors as
12 may be appropriate.

13 “(C) In the case of a proceeding referred to in sub-
14 paragraph (A), contractor costs otherwise allowable as re-
15 imburseable costs under this paragraph are not allowable
16 if (i) such proceeding involves the same contractor mis-
17 conduct alleged as the basis of another criminal, civil, or
18 administrative proceeding, and (ii) the costs of such other
19 proceeding are not allowable under paragraph (1).

20 “(6) In this subsection:

21 “(A) The term ‘proceeding’ includes an inves-
22 tigation.

23 “(B) The term ‘costs’, with respect to a
24 proceeding—

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1 “(i) means all costs incurred by a contrac-
2 tor, whether before or after the commencement
3 of any such proceeding; and

4 “(ii) includes—

5 “(I) administrative and clerical ex-
6 penses;

7 “(II) the cost of legal services, includ-
8 ing legal services performed by an em-
9 ployee of the contractor;

10 “(III) the cost of the services of ac-
11 countants and consultants retained by the
12 contractor; and

13 “(IV) the pay of directors, officers,
14 and employees of the contractor for time
15 devoted by such directors, officers, and em-
16 ployees to such proceeding.

17 “(C) The term ‘penalty’ does not include res-
18 titution, reimbursement, or compensatory damages.

19 “(1) COVERED CONTRACT DEFINED.—(1) In this sec-
20 tion, the term ‘covered contract’ means a contract for an
21 amount in excess of \$500,000 that is entered into by an
22 executive agency, except that such term does not include
23 a fixed-price contract without cost incentives.

24 “(2) Effective on October 1 of each year that is divis-
25 ible by 5, the amount set forth in paragraph (1) shall be

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1 adjusted to the amount that is equal to the fiscal year
 2 1994 constant dollar value of the amount set forth. An
 3 amount, as so adjusted, that is not evenly divisible by
 4 \$50,000 shall be rounded to the nearest multiple of
 5 \$50,000. In the case of an amount that is evenly divisible
 6 by \$25,000 but is not evenly divisible by \$50,000, the
 7 amount shall be rounded to the next higher multiple of
 8 \$50,000.”.

9 (b) CLERICAL AMENDMENT.—The table of contents
 10 in the first section of such Act is amended by striking out
 11 the item relating to section 306 and inserting in lieu there-
 12 of the following:

“Sec. 306. Allowable costs.”.

13 **PART III—ACQUISITIONS GENERALLY**

14 **SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-** 15 **TORS.**

16 Section 24 of the Office of Federal Procurement Pol-
 17 icy Act (41 U.S.C. 420) is repealed.

18 **Subtitle C—Audit and Access to** 19 **Records**

20 **PART I—ARMED SERVICES ACQUISITIONS**

21 **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY** 22 **TO EXAMINE RECORDS OF CONTRACTORS.**

23 **(a) AUTHORITY.—**

24 (1) IN GENERAL.—Section 2313 of title 10,
 25 United States Code, is amended to read as follows:

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1 **"§ 2313. Examination of records of contractor**

2 “(a) AGENCY AUTHORITY.—The head of an agency,
3 acting through an authorized representative—

4 “(1) is entitled to inspect the plant and audit
5 the records of—

6 “(A) a contractor performing a cost-reim-
7 bursement, incentive, time-and-materials, labor-
8 hour, or price-redeterminable contract, or any
9 combination of such contracts, made by that
10 agency under this chapter; and

11 “(B) a subcontractor performing any cost-
12 reimbursement, incentive, time-and-materials,
13 labor-hour, or price-redeterminable subcontract
14 under a contract referred to in subparagraph
15 (A) or under any combination of such contracts;
16 and

17 “(2) shall, for the purpose of evaluating the ac-
18 curacy, completeness, and currency of cost or pricing
19 data required to be submitted pursuant to section
20 2306a of this title with respect to a contract or sub-
21 contract, have the right to examine all records of the
22 contractor or subcontractor related to—

23 “(A) the proposal for the contract or sub-
24 contract;

25 “(B) the discussions conducted on the pro-
26 posal;

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1 “(C) pricing of the contract or subcontract;

2 or

3 “(D) performance of the contract or sub-
4 contract.

5 “(b) LIMITATION ON PREAWARD AUDITS RELATING
6 TO INDIRECT COSTS.—The head of an agency may not
7 perform a preaward audit to evaluate proposed indirect
8 costs under any contract, subcontract, or modification to
9 be entered into in accordance with this chapter in any case
10 in which the contracting officer determines that the objec-
11 tives of the audit can reasonably be met by accepting the
12 results of an audit conducted by any other department or
13 agency of the Federal Government within one year preced-
14 ing the date of the contracting officer's determination.

15 “(c) SUBPOENA POWER.—(1) The Director of the
16 Defense Contract Audit Agency (or any successor agency)
17 may require by subpoena the production of records of a
18 contractor, access to which is provided to the Secretary
19 of Defense or Secretary of a military department by sub-
20 section (a).

21 “(2) Any such subpoena, in the case of contumacy
22 or refusal to obey, shall be enforceable by order of an ap-
23 propriate United States district court.

24 “(3) The authority provided by paragraph (1) may
25 not be redelegated.

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1 “(4) The Director (or any successor official) shall
 2 submit an annual report to the Secretary of Defense on
 3 the exercise of such authority during the preceding year
 4 and the reasons why such authority was exercised in any
 5 instance. The Secretary shall forward a copy of each such
 6 report to the Committees on Armed Services of the Senate
 7 and House of Representatives.

8 “(d) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
 9 cept as provided in paragraph (2), each contract awarded
 10 after using procedures other than sealed bid procedures
 11 shall provide that the Comptroller General and his rep-
 12 resentatives are entitled to examine any records of the
 13 contractor, or any of its subcontractors, that directly per-
 14 tain to, and involve transactions relating to, the contract
 15 or subcontract.

16 “(2) Paragraph (1) does not apply to a contract or
 17 subcontract with a foreign contractor or foreign sub-
 18 contractor if the head of the agency concerned determines,
 19 with the concurrence of the Comptroller General or his
 20 designee, that the application of that paragraph to the
 21 contract or subcontract would not be in the public interest.
 22 However, the concurrence of the Comptroller General or
 23 his designee is not required—

24 “(A) where the contractor or subcontractor is a
 25 foreign government or agency thereof or is precluded

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1 by the laws of the country involved from making its
2 records available for examination; and

3 "(B) where the head of the agency determines,
4 after taking into account the price and availability of
5 the property and services from United States
6 sources, that the public interest would be best served
7 by not applying paragraph (1).

8 "(3) Paragraph (1) may not be construed to require
9 a contractor or subcontractor to create or maintain any
10 record that the contractor or subcontractor does not main-
11 tain in the ordinary course of business or pursuant to an-
12 other provision of law.

13 "(e) LIMITATION.—The right of the head of an agen-
14 cy under subsection (a), and the right of the Comptroller
15 General under subsection (d), with respect to a contract
16 or subcontract shall expire three years after final payment
17 under such contract or subcontract.

18 "(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—
19 This section is inapplicable with respect to the following
20 contracts:

21 "(1) Contracts for utility services at rates not
22 exceeding those established to apply uniformly to the
23 public, plus any applicable reasonable connection
24 charge.

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1 “(g) RECORDS DEFINED.—In this section, the term
2 ‘records’ includes books, documents, accounting proce-
3 dures and practices, and other data, regardless of type and
4 regardless of whether such items are in written form, in
5 the form of computer data, or in any other form.”.

6 (2) CLERICAL AMENDMENT.—The item relating
7 to such section in the table of sections at the begin-
8 ning of chapter 137 of title 10, United States Code,
9 is amended to read as follows:

“2313. Examination of records of contractor.”.

10 (b) REPEAL OF SUPERSEDED PROVISION.—

11 (1) REPEAL.—Section 2406 of title 10, United
12 States Code, is repealed.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions at the beginning of chapter 141 of such title
15 is amended by striking out the item relating to sec-
16 tion 2406.

17 **PART II—CIVILIAN AGENCY ACQUISITIONS**

18 **SEC. 2261. AUTHORITY TO EXAMINE RECORDS OF CON-**
19 **TRACTORS.**

20 (a) AUTHORITY.—

21 (1) IN GENERAL.—Title III of the Federal
22 Property and Administrative Services Act of 1949
23 (41 U.S.C. 251 et seq.), as amended by section
24 1251(a), is further amended by inserting after sec-
25 tion 304A the following new section:

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1 **"EXAMINATION OF RECORDS OF CONTRACTOR**

2 **"SEC. 304B. (a) AGENCY AUTHORITY.—The head of**
3 **an executive agency, acting through an authorized**
4 **representative—**

5 **"(1) is entitled to inspect the plant and audit**
6 **the records of—**

7 **"(A) a contractor performing a cost-reim-**
8 **bursement, incentive, time-and-materials, labor-**
9 **hour, or price-redeterminable contract, or any**
10 **combination of such contracts, made by that ex-**
11 **ecutive agency under this title; and**

12 **"(B) a subcontractor performing any cost-**
13 **reimbursement, incentive, time-and-materials,**
14 **labor-hour, or price-redeterminable subcontract**
15 **under a contract referred to in subparagraph**
16 **(A) or under any combination of such contracts;**
17 **and**

18 **"(2) shall, for the purpose of evaluating the ac-**
19 **curacy, completeness, and currency of cost or pricing**
20 **data required to be submitted pursuant to section**
21 **304A with respect to a contract or subcontract, have**
22 **the right to examine all records of the contractor or**
23 **subcontractor related to—**

24 **"(A) the proposal for the contract or sub-**
25 **contract;**

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1 “(B) the discussions conducted on the pro-
2 posal;

3 “(C) pricing of the contract or subcontract;
4 or

5 “(D) performance of the contract or sub-
6 contract.

7 “(b) LIMITATION ON PREAWARD AUDITS RELATING
8 TO INDIRECT COSTS.—The agency head may not perform
9 a preaward audit to evaluate proposed indirect costs under
10 any contract, subcontract, or modification to be entered
11 into in accordance with this title in any case in which the
12 contracting officer determines that the objectives of the
13 audit can reasonably be met by accepting the results of
14 an audit conducted by any other department or agency
15 of the Federal Government within one year preceding the
16 date of the contracting officer's determination.

17 “(c) SUBPOENA POWER.—(1) The agency head may
18 require by subpoena the production of records of a con-
19 tractor, access to which is provided by subsection (a).

20 “(2) Any such subpoena, in the case of contumacy
21 or refusal to obey, shall be enforceable by order of an ap-
22 propriate United States district court.

23 “(3) The authority provided by paragraph (1) may
24 not be delegated.

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1 “(4) In the year following a year in which the head
2 of an executive agency exercises the authority provided in
3 paragraph (1), the agency head shall submit to the Com-
4 mittee on Governmental Affairs of the Senate and the
5 Committee on Government Operations of the House of
6 Representatives a report on the exercise of such authority
7 during such preceding year and the reasons why such au-
8 thority was exercised in any instance.

9 “(d) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
10 cept as provided in paragraph (2), each contract awarded
11 after using procedures other than sealed bid procedures
12 shall provide that the Comptroller General and his rep-
13 resentatives are entitled to examine any records of the
14 contractor, or any of its subcontractors, that directly per-
15 tain to, and involve transactions relating to, the contract
16 or subcontract.

17 “(2) Paragraph (1) does not apply to a contract or
18 subcontract with a foreign contractor or foreign sub-
19 contractor if the agency head concerned determines, with
20 the concurrence of the Comptroller General or his des-
21 ignee, that the application of that paragraph to the con-
22 tract or subcontract would not be in the public interest.
23 However, the concurrence of the Comptroller General or
24 his designee is not required—

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1 “(3) Paragraph (1) may not be construed to require
2 a contractor or subcontractor to create or maintain any
3 record that the contractor or subcontractor does not main-
4 tain in the ordinary course of business or pursuant to an-
5 other provision of law.

6 “(A) where the contractor or subcontractor is a
7 foreign government or agency thereof or is precluded
8 by the laws of the country involved from making its
9 records available for examination; and

10 “(B) where the agency head determines, after
11 taking into account the price and availability of the
12 property and services from United States sources,
13 that the public interest would be best served by not
14 applying paragraph (1).

15 “(e) LIMITATION.—The right of an agency head
16 under subsection (a), and the right of the Comptroller
17 General under subsection (d), with respect to a contract
18 or subcontract shall expire three years after final payment
19 under such contract or subcontract.

20 “(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—
21 This section is inapplicable with respect to the following
22 contracts:

23 “(1) CONTRACTS.—For utility services at rates
24 not exceeding those established to apply uniformly to

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1 the public, plus any applicable reasonable connection
2 charge.

3 “(g) RECORDS DEFINED.—In this section, the term
4 ‘records’ includes books, documents, accounting proce-
5 dures and practices, and other data, regardless of type and
6 regardless of whether such items are in written form, in
7 the form of computer data, or in any other form.”.

8 (2) CLERICAL AMENDMENT.—The table of con-
9 tents in the first section of such Act, as amended by
10 section 1251(b), is further amended by inserting
11 after the item relating to section 304A the following:

“Sec. 304B. Examination of records of contractor.”.

12 (b) REPEAL OF SUPERSEDED PROVISION.—Section
13 304 of the Federal Property and Administrative Services
14 Act of 1949 (41 U.S.C. 254) is amended by striking out
15 subsection (c).

16 Subtitle D—Cost Accounting 17 Standards

18 SEC. 2301. EXCEPTIONS TO COVERAGE.

19 Section 26(f)(2) of the Office of Federal Procurement
20 Policy Act (41 U.S.C. 422(f)(2)) is amended—

21 (1) by inserting “(A)” after “(2)”;

22 (2) by striking out “; other than contracts or
23 subcontracts” and all that follows and inserting in
24 lieu thereof a period; and

25 (3) by inserting at the end the following:

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1 “(B) Subparagraph (A) does not apply to the follow-
2 ing contracts or subcontracts:

3 “(i) Contracts or subcontracts where the price
4 negotiated is based on established catalog or market
5 prices of commercial items sold in substantial quan-
6 tities to the general public.

7 “(ii) Contracts or subcontracts where the price
8 negotiated is based on prices set by law or regula-
9 tion.

10 “(iii) Any other firm fixed-price contract or
11 subcontract for commercial items which is excepted
12 from the requirement to provide cost or pricing data
13 pursuant to subsection (b) or (d) of section 2306a
14 of title 10, United States Code, or subsection (b) or
15 (d) of section 304A of the Federal Property and Ad-
16 ministrative Services Act of 1949.”.

17 **SEC. 2302. REPEAL OF OBSOLETE DEADLINE REGARDING**
18 **PROCEDURAL REGULATIONS FOR THE COST**
19 **ACCOUNTING STANDARDS BOARD.**

20 Section 26(f)(3) of the Office of Federal Procurement
21 Policy Act (41 U.S.C. 422(f)(3)) is amended in the first
22 sentence by striking out “Not later than 180 days after
23 the date of the enactment of this section, the Adminis-
24 trator” and inserting in lieu thereof “The Administrator”.

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1 **Subtitle E—Administration of Con-**
 2 **tract Provisions Relating to**
 3 **Price, Delivery, and Product**
 4 **Quality**

5 **PART I—ARMED SERVICES ACQUISITIONS**

6 **SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND**
 7 **SHIP SPARE PARTS; QUALITY CONTROL.**

8 (a) **REPEAL.**—Section 2383 of title 10, United States
 9 Code, is repealed.

10 (b) **CLERICAL AMENDMENT.**—The table of sections
 11 at the beginning of chapter 141 of such title is amended
 12 by striking out the item relating to section 2383.

13 **SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-**
 14 **ON SYSTEMS.**

15 Section 2403(h) of title 10, United States Code, is
 16 amended—

17 (1) by redesignating paragraph (2) as para-
 18 graph (3); and

19 (2) by inserting after paragraph (1) the follow-
 20 ing new paragraph (2):

21 “(2) The regulations shall include the following:

22 “(A) Guidelines for negotiating contractor guar-
 23 antees that are reasonable and cost effective, as de-
 24 termined on the basis of the likelihood of defects and
 25 the estimated cost of correcting such defects.

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1 “(B) Procedures for administering contractor
2 guarantees.

3 “(C) Guidelines for determining the cases in
4 which it may be appropriate to waive the require-
5 ments of this section.”.

6 **PART II—ACQUISITIONS GENERALLY**

7 **SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EX-**
8 **PANSION OF AUTHORITY TO PROHIBIT**
9 **SETOFFS AGAINST ASSIGNEES; REORGANIZA-**
10 **TION OF SECTION; REVISION OF OBSOLETE**
11 **PROVISIONS.**

12 Section 3737 of the Revised Statutes (41 U.S.C. 15)
13 is amended to read as follows: .

14 “SEC. 3737. (a) No contract or order, or any interest
15 therein, shall be transferred by the party to whom such
16 contract or order is given to any other party, and any such
17 transfer shall cause the annulment of the contract or order
18 transferred, so far as the United States is concerned. All
19 rights of action, however, for any breach of such contract
20 by the contracting parties, are reserved to the United
21 States.

22 “(b) The provisions of subsection (a) shall not apply
23 in any case in which the moneys due or to become due
24 from the United States or from any agency or department
25 thereof, under a contract providing for payments aggre-

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1 gating \$1,000 or more, are assigned to a bank, trust com-
2 pany, or other financing institution, including any Federal
3 lending agency, provided:

4 “(1) That, in the case of any contract entered
5 into after October 9, 1940, no claim shall be as-
6 signed if it arises under a contract which forbids
7 such assignment.

8 “(2) That, unless otherwise expressly permitted
9 by such contract, any such assignment shall cover all
10 amounts payable under such contract and not al-
11 ready paid, shall not be made to more than one
12 party, and shall not be subject to further assign-
13 ment, except that any such assignment may be made
14 to one party as agent or trustee for two or more
15 parties participating in such financing.

16 “(3) That, in the event of any such assignment,
17 the assignee thereof shall file written notice of the
18 assignment together with a true copy of the instru-
19 ment of the assignment with—

20 “(A) the contracting officer or the head of
21 his department or agency;

22 “(B) the surety or sureties upon the bond
23 or bonds, if any, in connection with such con-
24 tract; and

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1 “(C) the disbursing officer, if any, des-
2 ignated in such contract to make payment.

3 “(c) Notwithstanding any law to the contrary govern-
4 ing the validity of assignments, any assignment pursuant
5 to this section shall constitute a valid assignment for all
6 purposes.

7 “(d) In any case in which moneys due or to become
8 due under any contract are or have been assigned pursu-
9 ant to this section, no liability of any nature of the as-
10 signor to the United States or any department or agency
11 thereof, whether arising from or independently of such
12 contract, shall create or impose any liability on the part
13 of the assignee to make restitution, refund, or repayment
14 to the United States of any amount heretofore since July
15 1, 1950, or hereafter received under the assignment.

16 “(e) Any contract of the Department of Defense, the
17 General Services Administration, the Department of En-
18 ergy, or any other department or agency of the United
19 States designated by the President, except any such con-
20 tract under which full payment has been made, may, upon
21 a determination of need by the President, provide or be
22 amended without consideration to provide that payments
23 to be made to the assignee of any moneys due or to become
24 due under such contract shall not be subject to reduction

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1 or setoff. Each such determination of need shall be pub-
2 lished in the Federal Register.

3 “(f) If a provision described in subsection (e) or a
4 provision to the same general effect has been at any time
5 heretofore or is hereafter included or inserted in any such
6 contract, payments to be made thereafter to an assignee
7 of any moneys due or to become due under such contract
8 shall not be subject to reduction or setoff for any liability
9 of any nature of the assignor to the United States or any
10 department or agency thereof which arises independently
11 of such contract, or hereafter for any liability of the as-
12 signor on account of—

13 “(1) renegotiation under any renegotiation stat-
14 ute or under any statutory renegotiation article in
15 the contract;

16 “(2) fines;

17 “(3) penalties (which term does not include
18 amounts which may be collected or withheld from
19 the assignor in accordance with or for failure to
20 comply with the terms of the contract); or

21 “(4) taxes, social security contributions, or the
22 withholding or non withholding of taxes or social se-
23 curity contributions, whether arising from or inde-
24 pendently of such contract.

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1 “(g) Except as herein otherwise provided, nothing in
2 this section shall be deemed to affect or impair rights of
3 obligations heretofore accrued.”.

4 **SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF**
5 **CONTRACTS WITH GAO.**

6 Section 3743 of the Revised Statutes (41 U.S.C. 20)
7 is repealed.

8 **Subtitle F—Claims and Disputes**

9 **PART I—ARMED SERVICES ACQUISITIONS**

10 **SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.**

11 (a) DOD CERTIFICATION REQUIREMENT IN CON-
12 FLICT WITH GOVERNMENTWIDE REQUIREMENT.—

13 (1) INAPPLICABILITY OF REQUIREMENT TO
14 CONTRACT CLAIMS.—Section 2410 of title 10, Unit-
15 ed States Code, is amended to read as follows:

16 “§2410. Requests for equitable adjustment or other
17 relief: certification

18 “(a) CERTIFICATION REQUIREMENT.—A request for
19 equitable adjustment to contract terms or request for re-
20 lief under Public Law 85-804 (50 U.S.C. 1431 et seq.)
21 that exceeds the simplified acquisition threshold may not
22 be paid unless a person authorized to certify the request
23 on behalf of the contractor certifies, at the time the re-
24 quest is submitted, that—

25 “(1) the request is made in good faith, and

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1 “(2) the supporting data are accurate and com-
2 plete to the best of that person’s knowledge and be-
3 lief.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions at the beginning of chapter 141 of such title
6 is amended by striking out the item relating to sec-
7 tion 2410 and inserting in lieu thereof the following:

“2410. Requests for equitable adjustment or other relief: certification.”.

8 (b) RESTRICTION ON LEGISLATIVE PAYMENT OF
9 CLAIMS.—Section 2410 of title 10, United States Code,
10 as amended by subsection (a), is further amended by add-
11 ing at the end the following new subsection:

12 “(b) RESTRICTION ON LEGISLATIVE PAYMENT OF
13 CLAIMS.—In the case of a contract of an agency named
14 in section 2303(a) of this title, no provision of a law en-
15 acted after September 30, 1994, that directs the payment
16 of a particular claim under such contract, a particular re-
17 quest for equitable adjustment to any term of such con-
18 tract, or a particular request for relief under Public Law
19 85-804 (50 U.S.C. 1431 et seq.) regarding such contract
20 may be implemented unless such provision of law—

21 “(1) specifically refers to this subsection; and

22 “(2) specifically states that this subsection does
23 not apply with respect to the payment directed by
24 that provision of law.”.

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1 (c) DEFINITION.—Section 2410, as amended by sub-
 2 sections (a) and (b), is further amended by adding at the
 3 end the following:

4 “(c) DEFINITION.—In this section, the term ‘sim-
 5 plified acquisition threshold’ has the meaning given that
 6 term in section 2302(4) of this title.”.

7 (d) REPEAL OF RELATED PROVISIONS.—

8 (1) CERTIFICATION REGULATIONS FOR CON-
 9 TRACT CLAIMS EXCEEDING \$100,000.—

10 (A) REPEAL.—Section 2410e of title 10,
 11 United States Code, is repealed.

12 (B) CLERICAL AMENDMENT.—The table of
 13 sections at the beginning of chapter 141 of such
 14 title is amended by striking out the item relat-
 15 ing to section 2410e.

16 (2) CONFORMING REPEAL.—Section 813(b) of
 17 the National Defense Authorization Act for Fiscal
 18 Year 1993 (Public Law 102-484, 106 Stat. 2453),
 19 is repealed.

20 SEC. 2302. SHIPBUILDING CLAIMS.

21 (a) LIMITATION ON PERIOD FOR SUBMISSION.—Sub-
 22 section (a) of section 2405 of title 10, United States Code,
 23 is amended by striking out “18 months” and inserting in
 24 lieu thereof “6 years”.

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1 (b) RESUBMISSION WITH CORRECTED CERTIFI-
 2 CATION.—Subsection (c) of such section is repealed.

3 **PART II—ACQUISITIONS GENERALLY**

4 **SEC. 2551. CLAIMS JURISDICTION OF UNITED STATES DIS-**
 5 **TRICT COURTS AND THE UNITED STATES**
 6 **COURT OF FEDERAL CLAIMS.**

7 (a) CONCURRENT JURISDICTION OF UNITED STATES
 8 DISTRICT COURTS UNDER THE LITTLE TUCKER ACT.—
 9 Subsection (a) of section 1346 of title 28, United States
 10 Code, is amended to read as follows:

11 “(a)(1) The district courts shall have original juris-
 12 diction, concurrent with the United States Court of Fed-
 13 eral Claims, of any civil action against the United States
 14 for the recovery of any internal-revenue tax alleged to have
 15 been erroneously or illegally assessed or collected, or any
 16 penalty claimed to have been collected without authority
 17 or any sum alleged to have been excessive or in any man-
 18 ner wrongfully collected under the internal-revenue laws.

19 “(2)(A) Except as provided in subparagraph (B), the
 20 district courts shall have original jurisdiction, concurrent
 21 with the United States Court of Federal Claims, of any
 22 other civil action or claim against the United States, not
 23 exceeding \$10,000 in amount, founded either upon the
 24 Constitution, or any Act of Congress, or any regulation
 25 of an executive department, or upon any express or im-

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1 plied contract with the United States, or for liquidated or
2 unliquidated damages in cases not sounding in tort.

3 “(B) The district courts shall not have jurisdiction
4 over any civil action or claim against the United States
5 or any Federal entity which relates in any manner to a
6 contract to which the Contract Disputes Act of 1978 (41
7 U.S.C. 601 et seq.) applies, including a claim that seeks
8 to establish the existence or nonexistence of such a con-
9 tract, seeks to establish that such a contract is void, or
10 seeks to determine and construe the terms of such a con-
11 tract. The district courts do not have jurisdiction over any
12 civil action or claim described in the preceding sentence
13 pursuant to section 1331, 1334, or 1346(a)(2)(B) of this
14 title, any provision of law giving a Federal entity the right
15 to sue or be sued in its own name, or any other provision
16 of law.”.

17 (b) JURISDICTION OF THE UNITED STATES COURT
18 OF FEDERAL CLAIMS UNDER THE TUCKER ACT.—Sec-
19 tion 1491 of title 28, United States Code, as amended by
20 section 1422, is further amended by inserting after sub-
21 section (c) the following:

22 “(d)(1) The United States Court of Federal Claims
23 shall have jurisdiction over any civil action or claim
24 against the United States which relates in any manner to
25 a contract to which the Contract Disputes Act of 1978

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1 (41 U.S.C. 601 et seq.) applies, including a civil action
 2 or claim that seeks to establish the existence or
 3 nonexistence of such a contract, seeks to establish that
 4 such contract is void, or seeks to determine and construe
 5 the terms of any such contract.

6 “(2) The jurisdiction of the United States Court of
 7 Federal Claims is, pursuant to section 1346(a)(2)(B) of
 8 this title, exclusive as to the district courts of the United
 9 States.”.

10 **SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.**

11 **(a) PERIOD FOR FILING CLAIMS.—**

12 **(1) SIX-YEAR LIMITATION.—**Section 6 of the
 13 Contract Disputes Act of 1978 (41 U.S.C. 605) is
 14 amended in subsection (a) by inserting after the sec-
 15 ond sentence the following: “Each claim by a con-
 16 tractor against the government relating to a contract
 17 and each claim by the government against a contrac-
 18 tor relating to a contract shall be submitted within
 19 6 years after the occurrence of the event or events
 20 giving rise to the claim. The preceding sentence does
 21 not apply to a claim by the government against a
 22 contractor that is based on a claim by the contractor
 23 involving fraud.”.

24 **(2) LIMITATION ON APPLICABILITY TO EXIST-**
 25 **ING CONTRACTS.—**Notwithstanding the third sen-

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1 tence of section 6(a) of the Contract Disputes Act
2 of 1978, as added by paragraph (1), if a contract in
3 existence on the date of the enactment of this Act
4 requires that a claim referred to in that sentence be
5 submitted earlier than 6 years after the occurrence
6 of the event or events giving rise to the claim, then
7 the claim shall be submitted within the period re-
8 quired by the contract. The preceding sentence does
9 not apply to a claim by the Federal Government
10 against a contractor that is based on a claim by the
11 contractor involving fraud.

12 (b) INCREASED THRESHOLD FOR CERTIFICATION,
13 DECISION, AND NOTIFICATION REQUIREMENTS.—Sub-
14 section (c) of such section is amended by striking out
15 “\$50,000” each place it appears and inserting in lieu
16 thereof “\$100,000”.

17 (c) INCREASED MAXIMUM FOR APPLICABILITY OF
18 ACCELERATED PROCEDURES.—Section 8(f) of the Con-
19 tract Disputes Act of 1978 (41 U.S.C. 607(f)) is amended
20 by striking out “\$50,000” in the first sentence and insert-
21 ing in lieu thereof “\$150,000.”

22 (d) INCREASED MAXIMUM FOR APPLICABILITY OF
23 SMALL CLAIMS PROCEDURE.—Section 9(a) of the Con-
24 tract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended

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1 by striking out "\$10,000" in the first sentence and insert-
 2 ing in lieu thereof "\$50,000".

3 (e) REDUCED PERIOD FOR FILING ACTION IN COURT
 4 OF FEDERAL CLAIMS.—Section 10(a)(3) of such Act (41
 5 U.S.C. 609(a)(3)) is amended by striking out "twelve
 6 months" and inserting in lieu thereof "90 days".

7 SEC. 2553. EXTENSION OF ALTERNATIVE DISPUTE RESOLU-
 8 TION AUTHORITY.

9 Section 6(e) of the Contracts Disputes Act of 1978
 10 (41 U.S.C. 605(e)) is amended by striking out "October
 11 1, 1995" and inserting in lieu thereof "October 1, 1999".

12 SEC. 2554. EXPEDITED RESOLUTION OF CONTRACT ADMIN-
 13 ISTRATION COMPLAINTS.

14 (a) REGULATIONS REQUIRED.—The Federal Acquisi-
 15 tion Regulation shall include provisions that require a con-
 16 tracting officer—

17 (1) to make every reasonable effort to respond
 18 in writing within 30 days to any written request for
 19 a contracting officer's decision with respect to a
 20 matter relating to the administration of a contract
 21 that is received from a small business concern; and

22 (2) in the event that the contracting officer is
 23 unable to render a decision within the 30-day period,
 24 to transmit to the contractor within such period a

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1 written notification of a specific date by which the
2 contracting officer expects to reach a decision.

3 (b) RULE OF CONSTRUCTION.—Nothing in this pro-
4 vision shall be considered as creating any rights under the
5 Contract Disputes Act (41 U.S.C. 601 et seq.).

6 (c) DEFINITION.—In this section, the term “small
7 business concern” means a business concern that meets
8 the requirements of section 3(a) of the Small Business Act
9 (15 U.S.C. 632(a)) and the regulations promulgated pur-
10 suant to that section.

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1 **TITLE III—SERVICE SPECIFIC**
 2 **AND MAJOR SYSTEMS STATUTES**
 3 **Subtitle A—Major Systems Statutes**

4 **SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTI-**
 5 **MATES AND MANPOWER ESTIMATES BEFORE**
 6 **DEVELOPMENT OR PRODUCTION.**

7 (a) **CONTENT AND SUBMISSION OF ESTIMATES.—**

8 Section 2434 of title 10, United States Code, is amended
 9 by striking out subsection (b) and inserting in lieu thereof
 10 the following:

11 “(b) **REGULATIONS.**—The Secretary of Defense shall
 12 prescribe regulations governing the content and submis-
 13 sion of the estimates required by subsection (a). The regu-
 14 lations shall require—

15 “(1) that the independent estimate of the cost
 16 of a program—

17 “(A) be prepared by an office or other en-
 18 tity that is not under the supervision, direction,
 19 or control of the military department, Defense
 20 Agency, or other component of the Department
 21 of Defense that is directly responsible for carry-
 22 ing out the development or acquisition of the
 23 program; and

24 “(B) include all costs of development, pro-
 25 curement, and operations and support, without

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1 regard to funding source or management con-
 2 trol; and

3 "(2) that the manpower estimate include the
 4 total personnel required to train for, operate, main-
 5 tain, and support the program upon full operational
 6 deployment."

7 (b) TERMINOLOGY CORRECTION.—Subsection (a) of
 8 such section is amended by striking out "full-scale engi-
 9 neering development" and inserting in lieu thereof "engi-
 10 neering and manufacturing development".

11 SEC. 3002. ENHANCED PROGRAM STABILITY.

12 (a) BASELINE DESCRIPTIONS AND DEVIATION RE-
 13 PORTING.—Section 2435 of title 10, United States Code,
 14 is amended—

15 (1) in subsection (a)—

16 (A) by striking out paragraph (2); and

17 (B) in paragraph (1)—

18 (i) by striking out "(1)"; and

19 (ii) by redesignating subparagraphs

20 (A) and (B) as paragraphs (1) and (2), re-
 21 spectively; and

22 (2) by striking out subsection (b) and inserting
 23 in lieu thereof the following:

24 "(b) REGULATIONS.—The Secretary of Defense shall
 25 prescribe regulations governing—

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1 “(1) the content of baseline descriptions, which
2 shall include the program cost, the program sched-
3 ule, and a program performance description;

4 “(2) the submission of reports on deviations of
5 a program from the baseline description by the pro-
6 gram manager to the Secretary of the military de-
7 partment concerned and the Under Secretary of De-
8 fense for Acquisition;

9 “(3) procedures for review of deviation reports
10 within the Department of Defense; and

11 “(4) procedures for submission and approval of
12 revised baseline descriptions.

13 “(c) BASELINE DESCRIPTION REQUIRED BEFORE
14 OBLIGATION OF FUNDS.—(1) Except as provided in para-
15 graph (2), no amount appropriated or otherwise made
16 available to the Department of Defense may be obligated
17 for a major defense acquisition program before a baseline
18 description for the program is approved in accordance with
19 the procedures prescribed pursuant to subsection (b)(4).

20 “(2) An obligation otherwise prohibited by paragraph
21 (1) may be incurred if approved in advance by the Under
22 Secretary of Defense for Acquisition and Technology.”.

23 (b) TERMINOLOGY CORRECTION.—Subsection (a)(1)
24 of such section, as redesignated by subsection
25 (a)(1)(B)(ii), is amended by striking out “full-scale engi-

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1 neering development" and inserting in lieu thereof "engi-
2 neering and manufacturing development".

3 **SEC. 3003. REPEAL OF REQUIREMENT TO DESIGNATE CER-**
4 **TAIN MAJOR DEFENSE ACQUISITION PRO-**
5 **GRAMS AS DEFENSE ENTERPRISE PRO-**
6 **GRAMS.**

7 Section 809 of the National Defense Authorization
8 Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C.
9 2430 note) is amended—

10 (1) by striking out subsection (d); and
11 (2) by redesignating subsections (e), (f), (g),
12 and (h) as subsections (d), (e), (f), and (g), respec-
13 tively.

14 **SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE**
15 **PROTOTYPING IN MAJOR PROGRAMS.**

16 (a) **REPEAL.**—Section 2438 of title 10, United States
17 Code, is repealed.

18 (b) **CLERICAL AMENDMENT.**—The table of sections
19 at the beginning of chapter 144 of such title is amended
20 by striking out the item relating to section 2438.

21 **SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE**
22 **ALTERNATIVE SOURCES IN MAJOR PRO-**
23 **GRAMS.**

24 (a) **REPEAL.**—Section 2439 of title 10, United States
25 Code, is repealed.

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1 (b) CLERICAL AMENDMENT.—The table of sections
 2 at the beginning of chapter 144 of such title is amended
 3 by striking out the item relating to section 2439.

4 Subtitle B—Testing Statutes

5 SEC. 3011. DIRECTOR OF OPERATIONAL TEST AND EVALUA-
 6 TION TO REPORT DIRECTLY TO SECRETARY
 7 OF DEFENSE.

8 Section 139(c) of title 10, United States Code, is
 9 amended by inserting after “(c)” the following: “The Di-
 10 rector reports directly, without intervening review or ap-
 11 proval, to the Secretary of Defense and Deputy Secretary
 12 of Defense personally.”.

13 SEC. 3012. RESPONSIBILITY OF DIRECTOR OF OPER-
 14 ATIONAL TEST AND EVALUATION FOR LIVE
 15 FIRE TESTING.

16 (a) CONDUCT OF LIVE FIRE TESTING.—Subsection
 17 (b) of section 139 of title 10, United States Code, is
 18 amended—

19 (1) by striking out “and” at the end of para-
 20 graph (4);

21 (2) by striking out the period at the end of
 22 paragraph (5) and inserting in lieu thereof “; and”;
 23 and

24 (3) by adding at the end the following new
 25 paragraph:

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1 “(6) conduct the live fire testing activities of
2 the Department of Defense provided for under sec-
3 tion 2366 of this title.”.

4 (b) ANNUAL REPORT ON LIVE FIRE TESTING.—Sub-
5 section (f) of such section is amended by inserting “(in-
6 cluding live fire testing activities)” in the first sentence
7 after “operational test and evaluation activities”.

8 SEC. 3013. REQUIREMENT FOR UNCLASSIFIED VERSION OF
9 ANNUAL REPORT ON OPERATIONAL TEST
10 AND EVALUATION.

11 Section 139(f) of title 10, United States Code, is
12 amended by inserting after the second sentence the follow-
13 ing new sentence: “If the Director submits the report to
14 Congress in a classified form, the Director shall concur-
15 rently submit an unclassified version of the report to Con-
16 gress.”.

17 **Subtitle C—Service Specific Laws**

18 SEC. 3021. GRATUITOUS SERVICES OF OFFICERS OF CER-
19 TAIN RESERVE COMPONENTS.

20 Section 279 of title 10, United States Code, is
21 amended—

22 (1) by striking out “Notwithstanding” and in-
23 serting in lieu thereof “(a) ACCEPTANCE BY SEC-
24 RETARY OF A MILITARY DEPARTMENT.—Notwith-
25 standing”; and

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1 (2) by adding at the end the following new sub-
 2 section:

3 "(b) ACCEPTANCE BY SECRETARY OF DEFENSE.—
 4 Notwithstanding section 1342 of title 31, the Secretary
 5 of Defense may accept the gratuitous services of an officer
 6 of a reserve component (other than an officer of the Army
 7 National Guard of the United States or the Air National
 8 Guard of the United States) in consultation upon matters
 9 relating to the armed forces."

10 SEC. 3022. CIVIL RESERVE AIR FLEET.

11 (a) DEFINITIONS.—Section 9511 of title 10, United
 12 States Code, is amended—

13 (1) in paragraph (1)—

14 (A) by inserting "'civil aircraft,'" after
 15 "'person','";

16 (B) by striking out "meaning" and insert-
 17 ing in lieu thereof "meanings"; and

18 (C) by striking out "(49 U.S.C. 1301)"
 19 and inserting in lieu thereof "(49 U.S.C. App.
 20 1301)";

21 (2) in paragraph (2), by striking out "pas-
 22 senger-cargo" and inserting in lieu thereof "pas-
 23 senger cargo";

24 (3) in paragraph (3), by striking out "cargo-ca-
 25 pable" and inserting in lieu thereof "cargo capable";

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1 (4) by striking out paragraph (5) and inserting
2 in lieu thereof the following:

3 "(5) The term 'cargo convertible aircraft'
4 means a passenger aircraft equipped or designed so
5 that all or substantially all of the main deck of the
6 aircraft can be readily converted for the carriage of
7 property or mail.";

8 (5) by striking out paragraph (6);

9 (6) by redesignating paragraph (7) as para-
10 graph (6);

11 (7) by redesignating paragraph (8) as para-
12 graph (7) and—

13 (A) in subparagraph (A) of such para-
14 graph, by inserting "under section 9512 of this
15 title" after "and who contracts with the Sec-
16 retary";

17 (B) by striking out "or" at the end of such
18 subparagraph (A); and

19 (C) by inserting before the period at the
20 end of such paragraph the following: ", or (C)
21 who owns or controls existing aircraft, or will
22 own or control new aircraft, and who contrac-
23 tually commits all or some of such aircraft to
24 the Civil Reserve Air Fleet";

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1 (8) by redesignating paragraphs (9), (10), (11),
 2 and (12) as paragraphs (8), (9), (10), and (11), re-
 3 spectively; and

4 (9) in paragraph (11), as so redesignated—

5 (A) by striking out “interoperability” and
 6 inserting in lieu thereof “compatibility”; and

7 (B) by striking out “a cargo-convertible,
 8 cargo-capable, or passenger-cargo combined air-
 9 craft” and inserting in lieu thereof “an
 10 aeromedical aircraft or a cargo convertible,
 11 cargo capable, or passenger cargo combined air-
 12 craft”.

13 (b) CONSOLIDATION OF PROVISIONS RELATING TO
 14 CONTRACTUAL COMMITMENT OF AIRCRAFT.—Chapter
 15 931 of such title is amended—

16 (1) by redesignating subsections (b) and (c) of
 17 section 9512 as subsections (c) and (d), respectively;

18 (2) by redesignating subsection (a) of section
 19 9513 as subsection (b), transferring such subsection
 20 (as so redesignated) to section 9512, and inserting
 21 such subsection after subsection (a);

22 (3) by redesignating subsection (b) of section
 23 9513 as subsection (e) and transferring such sub-
 24 section (as so redesignated) to the end of section
 25 9512;

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1 (4) in subsection (c) of section 9512, as reded-
 2 ignated by paragraph (1), by striking out "the terms
 3 required by section 9513 of this title and";

4 (5) in subsection (e) of section 9512, as reded-
 5 ignated and transferred to such section by para-
 6 graph (3), by striking out "under section 9512 of
 7 this title" and inserting in lieu thereof "entered into
 8 under this section"; and

9 (6) by striking out the heading of section 9513.

10 (c) USE OF MILITARY INSTALLATIONS BY CONTRAC-
 11 TORS.—

12 (1) AUTHORITY.—Such chapter, as amended by
 13 subsection (b), is further amended by adding at the
 14 end the following new section 9513:

15 "§ 9513. Use of military installations by Civil Reserve
 16 Air Fleet contractors

17 "(a) CONTRACT AUTHORITY.—(1) The Secretary of
 18 the Air Force—

19 "(A) may, by contract entered into with any
 20 contractor, authorize such contractor to use one or
 21 more Air Force installations designated by the Sec-
 22 retary; and

23 "(B) with the consent of the Secretary of an-
 24 other military department, may, by contract entered
 25 into with any contractor, authorize the contractor to

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1 use one or more installations, designated by the Sec-
2 retary of the Air Force, that is under the jurisdic-
3 tion of the Secretary of such other military depart-
4 ment.

5 “(2) The Secretary of the Air Force may include in
6 the contract such terms and conditions as the Secretary
7 determines appropriate to promote the national defense or
8 to protect the interests of the United States.

9 “(b) PURPOSES OF USE.—A contract entered into
10 under subsection (a) may authorize use of a designated
11 installation as a weather alternate, a service stop not in-
12 volving the enplaning or deplaning of passengers or cargo,
13 or, in the case of an installation within the United States,
14 for other commercial purposes. Notwithstanding any other
15 provision of the law, the Secretary may establish different
16 levels and types of uses for different installations for com-
17 mercial operations not required by the Department of De-
18 fense and may provide in contracts under subsection (a)
19 for different levels and types of uses by different contrac-
20 tors.

21 “(c) DISPOSITION OF PAYMENTS FOR USE.—Not-
22 withstanding any other provision of law, amounts collected
23 from the contractor for landing fees, services, supplies, or
24 other charges authorized to be collected under the contract
25 shall be credited to the appropriations of the armed forces

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1 having jurisdiction over the military installation to which
 2 the contract pertains. Amounts so credited to an appro-
 3 priation shall be available for obligation for the same pe-
 4 riod as the appropriation to which credited.

5 “(d) **HOLD HARMLESS REQUIREMENT.**—A contract
 6 entered into under subsection (a) shall provide that the
 7 contractor agrees to indemnify and hold harmless the Air
 8 Force (and any other armed force having jurisdiction over
 9 any installation covered by the contract) from all actions,
 10 suits, or claims of any sort resulting from, relating to, or
 11 arising out of any activities conducted, or services or sup-
 12 plies furnished, in connection with the contract.

13 “(e) **RESERVATION OF RIGHT TO EXCLUDE CON-**
 14 **TRACTOR.**—A contract entered into under subsection (a)
 15 shall provide that the Secretary or, in the case of an instal-
 16 lation under the jurisdiction of an armed force other than
 17 the Air Force, the Secretary concerned may at any time
 18 and without prior notice deny access to an installation des-
 19 ignated under the contract if military exigencies require
 20 such action.”.

21 (2) **CLERICAL AMENDMENT.**—The table of sec-
 22 tions at the beginning of such chapter is amended
 23 by striking out the item relating to section 9513 and
 24 inserting in lieu thereof the following:

“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.

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1 **SEC. 3023. EXCHANGE OF PERSONNEL.**

2 (a) **EXCHANGE AUTHORITY.**—Subchapter II of chap-
3 ter 138 of title 10, United States Code, is amended by
4 adding at the end the following new section:

5 **“§ 2350k. Exchange of personnel**

6 “(a) **INTERNATIONAL EXCHANGE AGREEMENTS AU-**
7 **THORIZED.**—Under regulations prescribed by the Sec-
8 retary of Defense, the Secretary and the secretaries of the
9 military departments are each authorized to enter into
10 agreements with the governments of foreign countries for
11 the exchange of military and civilian personnel of the De-
12 partment of Defense and military and civilian personnel
13 of the defense departments or ministries of such foreign
14 governments.

15 “(b) **ASSIGNMENT OF PERSONNEL.**—Pursuant to
16 such agreements, personnel of the foreign defense depart-
17 ments or ministries may be assigned to positions in the
18 Department of Defense, and personnel of the Department
19 of Defense may be assigned to positions in foreign defense
20 departments or ministries. Agreements for the exchange
21 of personnel engaged in research and development activi-
22 ties may provide for assignments to positions in private
23 industry that support the defense departments or min-
24 istries. The specific positions and the individuals to be as-
25 signed must be acceptable to both the sending government
26 and the host government.

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1 “(c) **RECIPROCITY OF PERSONNEL QUALIFICATIONS**
 2 **REQUIRED.**—Each government shall be required under an
 3 agreement authorized by subsection (a) to provide person-
 4 nel having qualifications, training, and skills that are es-
 5 sentially equal to those of the personnel provided by the
 6 other government.

7 “(d) **PAYMENT OF PERSONNEL COSTS.**—Each gov-
 8 ernment shall pay the salary, per diem, cost of living, trav-
 9 el, cost of language or other training, and other costs (ex-
 10 cept for cost of temporary duty directed by the host gov-
 11 ernment and costs incident to the use of host government
 12 facilities in the performance of assigned duties) for its own
 13 personnel in accordance with the laws and regulations of
 14 such government that pertain to such matters.”.

15 (b) **CLERICAL AMENDMENT.**—The table of sections
 16 at the beginning of subchapter II of such chapter is
 17 amended by adding at the end the following new item:

“2350k. Exchange of personnel.”.

18 **SEC. 3024. SCIENTIFIC INVESTIGATION AND RESEARCH**
 19 **FOR THE NAVY.**

20 (a) **REPEAL.**—Section 7203 of title 10, United States
 21 Code, is repealed.

22 (b) **CLERICAL AMENDMENT.**—The table of sections
 23 at the beginning of chapter 631 of such title is amended
 24 by striking out the item relating to section 7203.

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1 **SEC. 3025. CONSTRUCTION OF COMBATANT AND ESCORT**
 2 **VESSELS AND ASSIGNMENT OF VESSEL**
 3 **PROJECTS.**

4 (a) **REPEAL OF OBSOLETE AND INTERNALLY INCON-**
 5 **SISTENT PROVISIONS.**—Section 7299a of title 10, United
 6 States Code, is amended—

7 (1) by striking out subsection (a); and
 8 (2) by redesignating subsections (b) and (c) as
 9 subsections (a) and (b), respectively.

10 (b) **CONFORMING AMENDMENT.**—Subsection (b) of
 11 such section, as redesignated by subsection (a)(2), is
 12 amended in paragraph (2) by striking out “subsection (a)
 13 or”.

14 **SEC. 3026. REPEAL OF REQUIREMENT FOR CONSTRUCTION**
 15 **OF VESSELS ON PACIFIC COAST.**

16 (a) **REPEAL.**—Section 7302 of title 10, United States
 17 Code, is repealed.

18 (b) **CLERICAL AMENDMENT.**—The table of sections
 19 at the beginning of chapter 633 of such title is amended
 20 by striking out the item relating to section 7302.

21 **SEC. 3027. AUTHORITY TO TRANSFER BY GIFT A VESSEL**
 22 **STRICKEN FROM NAVAL VESSEL REGISTER.**

23 Section 7306(a)(1) of title 10, United States Code,
 24 is amended by inserting “Territory,” after “State,”.

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1 **SEC. 3023. NAVAL SALVAGE FACILITIES.**

2 Chapter 637 of title 10, United States Code, is
3 amended—

4 (1) in section 7361—

5 (A) in subsection (a), by inserting “AU-
6 THORITY TO PROVIDE FACILITIES BY CON-
7 TRACT OR OTHERWISE.—” after “(a)”;

8 (B) in subsection (b), by inserting “CON-
9 TRACTS AFFECTING THE DEPARTMENT OF
10 TRANSPORTATION.—” after “(b)”;

11 (C) by striking out subsection (c) and in-
12 serting in lieu thereof the following new sub-
13 section (c):

14 “(c) **LIMITATION ON TERM CONTRACTS.**—Term con-
15 tracts may be entered into for purposes of this section only
16 after—

17 “(1) it has been demonstrated to the satisfac-
18 tion of the Secretary of the Navy that available com-
19 mercial salvage facilities are inadequate to meet na-
20 tional defense requirements; and

21 “(2) the Secretary of the Navy determines that
22 adequate public notice of intent to exercise the au-
23 thority under this subsection has been provided.”;

24 (2) by designating the text of section 7362 as
25 subsection (d) and transferring such text, as so des-

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1 ignated, to the end of section 7361 of title 10,
2 United States Code;

3 (3) in subsection (d) of section 7361 of such
4 title, as so designated and transferred, by inserting
5 before "The Secretary" the following: "COMMERCIAL
6 USE OF NAVAL VESSELS AND EQUIPMENT.—";

7 (4) by designating the text of section 7363 as
8 subsection (e) and transferring such text, as so des-
9 ignated, to the end of section 7361 of title 10,
10 United States Code;

11 (5) in subsection (e) of section 7361 of such
12 title, as so designated and transferred, by inserting
13 before "Before any salvage vessel" the following:
14 "CONDITIONS FOR TRANSFER OF EQUIPMENT.—";

15 (6) by designating the text of section 7365 as
16 subsection (f) and transferring such text, as so des-
17 ignated, to the end of section 7361 of title 10,
18 United States Code;

19 (7) in subsection (f) of section 7361 of such
20 title, as so designated and transferred, by inserting
21 before "The Secretary" the following: "SETTLE-
22 MENT OF CLAIMS.—";

23 (8) by designating the text of section 7367 as
24 subsection (g) and transferring such text, as so des-

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1 ignated, to the end of section 7361 of title 10,
2 United States Code;

3 (9) in subsection (g) of section 7361 of such
4 title, as so designated and transferred—

5 (A) by inserting before "Money received"
6 the following: "DISPOSITION OF RECEIPTS.—";
7 and

8 (B) by striking out "this chapter" in the
9 first sentence and inserting in lieu thereof "this
10 section";

11 (10) by striking out the section headings for
12 sections 7362, 7363, 7365, and 7367;

13 (11) by striking out the heading for section
14 7361 and inserting in lieu thereof the following:

15 "**§ 7361. Navy support for salvage operations**";

16 and

17 (12) in the table of sections at the beginning of
18 such chapter—

19 (A) by striking out the item relating to
20 section 7361 and inserting in lieu thereof the
21 following:

 "7361. Navy support for salvage operations.";

22 and

23 (B) by striking out the items relating to
24 sections 7362, 7363, 7365, and 7367.

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1 **Subtitle D—Department of Defense**
 2 **Commercial and Industrial Ac-**
 3 **tivities**

4 **SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.**

5 (a) **CONSOLIDATION AND REVISION OF AUTHOR-**
 6 **ITY.—**

7 (1) **AUTHORITY.**—Subchapter V of chapter 148
 8 of title 10, United States Code is amended by add-
 9 ing at the end the following:

10 **"§ 2542. Factories and arsenals: manufacture at**

11 "(a) The Secretary of Defense or the Secretary of
 12 a military department may have supplies needed for the
 13 Department of Defense or such military department, as
 14 the case may be, made in factories or arsenals owned by
 15 the United States.

16 "(b) The Secretary of Defense or the Secretary of
 17 the military department concerned may abolish any
 18 United States arsenal that such Secretary considers un-
 19 necessary."

20 (2) **TECHNICAL AMENDMENT.**—The table of
 21 sections at the beginning of subchapter V of such
 22 chapter is amended by adding at the end the follow-
 23 ing new item:

"2542. Factories and arsenals: manufacture at."

24 (b) **REPEAL OF SUPERSEDED AUTHORITY.—**

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1 (1) **ARMY AUTHORITY.**—

2 (A) **REPEAL.**—Section 4532 of title 10,
3 United States Code, is repealed.

4 (B) **CLERICAL AMENDMENT.**—The table of
5 sections at the beginning of chapter 433 of such
6 title is amended by striking out the item relat-
7 ing to section 4532.

8 (2) **AIR FORCE AUTHORITY.**—

9 (A) **REPEAL.**—Section 9532 of title 10,
10 United States Code, is repealed.

11 (B) **CLERICAL AMENDMENT.**—The table of
12 sections at the beginning of chapter 933 of such
13 title is amended by striking out the item relat-
14 ing to section 9532.

15 **SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED**
16 **ADVISORY AND ASSISTANCE SERVICES.**

17 (a) **FUNDING TO BE IDENTIFIED IN BUDGET.**—Sec-
18 tion 1105 of title 31, United States Code, is amended by
19 adding at the end the following new subsection:

20 “(g)(1) The Director of the Office of Management
21 and Budget shall establish the funding for advisory and
22 assistance services for each department and agency as a
23 separate object class in each budget annually submitted
24 to the Congress under this section.

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1 “(2)(A) In paragraph (1), except as provided in sub-
 2 paragraph (B), the term ‘advisory and assistance services’
 3 means the following services when provided by nongovern-
 4 mental sources:

5 “(i) Management and professional support serv-
 6 ices.

7 “(ii) Studies, analyses, and evaluations.

8 “(iii) Engineering and technical services.

9 “(B) In paragraph (1), the term ‘advisory and assist-
 10 ance services’ does not include the following services:

11 “(i) Routine automated data processing and
 12 telecommunications services (as defined in the Fed-
 13 eral Information Resources Management Regulation
 14 prescribed by the Administrator of General Services)
 15 unless such services are an integral part of a con-
 16 tract for the procurement of advisory and assistance
 17 services.

18 “(ii) Architectural and engineering services.

19 “(iii) Technical support of research and devel-
 20 opment activities.

21 “(iv) Research on basic mathematics or medi-
 22 cal, biological, physical, social, psychological, or
 23 other phenomena.”

24 (b) REPEAL OF SOURCE LAW.—Section 512 of Pub-
 25 lic Law 102-394 (106 Stat. 1826) is repealed.

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1 (c) REPEAL OF SUPERSEDED PROVISION.—

2 (1) DoD SPECIFIC LAW.—Section 2212 of title
3 10, United States Code, is repealed.

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions at the beginning of chapter 131 of such title
6 is amended by striking out the item relating to sec-
7 tion 2212.

8 **Subtitle E—Fuel- and Energy-**
9 **Related Laws**

10 **SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS**
11 **FOR STORAGE, HANDLING, OR DISTRIBUTION.**
12

13 Section 2388(a) of title 10, United States Code, is
14 amended by striking out “liquid fuels and natural gas”
15 and inserting in lieu thereof “liquid fuels or natural gas”.

16 **Subtitle F—Fiscal Statutes**

17 **SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DE-**
18 **PARTMENT TO COVER OBLIGATIONS OF AN-**
19 **OTHER AGENCY OF DEPARTMENT OF DE-**
20 **FENSE.**

21 Subsection (c)(2) of section 3321 of title 31, United
22 States Code, is amended by striking out “military depart-
23 ments of the” and inserting in lieu thereof “The”.

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1 **Subtitle G—Miscellaneous**

2 **SEC. 3061. OBLIGATION OF FUNDS: LIMITATION.**

3 Section 2202 of title 10, United States Code, is
4 amended to read as follows:

5 **“§ 2202. Obligation of funds: limitation**

6 “The Secretary of Defense shall prescribe regulations
7 governing the performance within the Department of De-
8 fense of the procurement, production, warehousing, and
9 supply distribution functions, and related functions, of the
10 Department of Defense.”.

11 **SEC. 3062. REPEAL OF REQUIREMENTS REGARDING PROD-**
12 **UCT EVALUATION ACTIVITIES.**

13 (a) **REPEAL.**—Section 2369 of title 10, United States
14 Code, is repealed.

15 (b) **CLERICAL AMENDMENT.**—The table of sections
16 at the beginning of chapter 139 of such title is amended
17 by striking out the item related to section 2369.

18 **SEC. 3063. CODIFICATION AND REVISION OF LIMITATION**
19 **ON LEASE OF VESSELS, AIRCRAFT, AND VEH-**
20 **CLES.**

21 (a) **LIMITATION.**—

22 (1) **IN GENERAL.**—Chapter 141 of title 10,
23 United States Code, is amended by adding at the
24 end the following new section:

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1 **"§24101. Lease of vessels, aircraft, and vehicles**

2 "The head of an agency named in paragraph (1), (2),
 3 (3), or (4) of section 2303(a) of this title may not enter
 4 into any contract with a term of 18 months or more, or
 5 extend or renew any contract for a term of 18 months
 6 or more, for any vessel, aircraft, or vehicle, through a
 7 lease, charter, or similar agreement without previously
 8 having considered all costs of such lease (including esti-
 9 mated termination liability) and determined in writing
 10 that such lease is in the best interest of the Government."

11 (2) CLERICAL AMENDMENT.—The table of sec-
 12 tions at the beginning of such chapter is amended
 13 by adding at the end the following:

"24101. Lease of vessels, aircraft, and vehicles."

14 (b) REPEAL OF SUPERSEDED PROVISION.—Section
 15 9081 of Public Law 101-165 (103 Stat. 1147; 10 U.S.C.
 16 2401 note) is repealed.

17 **SEC. 3064. SOFT DRINK SUPPLIES FOR EXCHANGE STORES.**

18 Section 2424 of title 10, United States Code, is
 19 amended by adding at the end the following new sub-
 20 section:

21 "(c) Paragraphs (1) and (2) of subsection (b) do not
 22 apply to contracts for the procurement of soft drinks that
 23 are manufactured in the United States. The Secretary of
 24 Defense shall prescribe in regulations the standards and
 25 procedures for determining whether a particular drink is

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1 a soft drink and whether the drink was manufactured in
2 the United States.".

3 SEC. 3066. REPEAL OF PREFERENCE FOR RECYCLED
4 TONER CARTRIDGES.

5 The following provisions of law, relating to a pref-
6 erence for procurement of recycled toner cartridges, are
7 repealed:

8 (1). Section 630 of Public Law 102-393 (106
9 Stat. 1773) and the provision of law set out in
10 quotes in that section (42 U.S.C. 6962(j)).

11 (2) Section 401 of Public Law 103-123 (107
12 Stat. 1238).

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1 **TITLE IV—SIMPLIFIED ACQUI-**
 2 **-TION THRESHOLD AND SO-**
 3 **CIOECONOMIC, SMALL BUSI-**
 4 **NESS, AND MISCELLANEOUS**
 5 **LAWS**

6 **Subtitle A—Simplified Acquisition**
 7 **Threshold**

8 **PART I—ESTABLISHMENT OF THRESHOLD**

9 **SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.**

10 (a) **TERM DEFINED.**—Section 4(11) of the Office of
 11 Federal Procurement Policy Act (41 U.S.C. 403(11)) is
 12 amended to read as follows:

13 “(11) The term ‘simplified acquisition thresh-
 14 old’ means \$100,000.”.

15 (b) **INTERIM REPORTING RULE.**—Until October 1,
 16 1999, procuring activities shall continue to report procure-
 17 ment awards with a dollar value of at least \$25,000, but
 18 less than \$100,000, in conformity with the procedures for
 19 the reporting of a contract award in excess of \$25,000
 20 that were in effect on October 1, 1992.

21 **PART II—SIMPLIFICATION OF PROCEDURES**

22 **SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.**

23 The Office of Federal Procurement Policy Act (41
 24 U.S.C. 401 et seq.) is amended by adding at the end the
 25 following new section:

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1 "SIMPLIFIED ACQUISITION PROCEDURES

2 "SEC. 29. (a) In order to promote efficiency and
3 economy in contracting and to avoid unnecessary burdens
4 for agencies and contractors, the Federal Acquisition Reg-
5 ulation shall provide for special simplified procedures for
6 contracts for acquisition of property and services that are
7 not in excess of the simplified acquisition threshold.

8 "(b) Regulations prescribed pursuant to subsection
9 (a) shall include the following provisions:

10 "(1) A provision that a contract with an antici-
11 pated value not in excess of \$2,500 is not subject to
12 section 15(j) of the Small Business Act (15 U.S.C.
13 644(j)) and section 2 of title III of the Act of March
14 3, 1933 (commonly known as the 'Buy America
15 Act') (41 U.S.C. 10a et seq.).

16 "(2) A provision that a civilian or military offi-
17 cial, or employee of an agency, whose contracting
18 authority does not exceed \$2,500 is not a procure-
19 ment official for the purposes of section 27 of this
20 Act.

21 "(3) A provision that a purchase not in excess
22 of \$2,500 may be made without obtaining competi-
23 tive quotations if the contracting officer determines
24 that the price for the purchase is reasonable.

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1 “(4) A requirement that purchases not in ex-
2 cess of \$2,500 be distributed equitably among quali-
3 fied suppliers.

4 “(c) A proposed purchase or contract for an amount
5 above the simplified acquisition threshold may not be di-
6 vided into several purchases or contracts for lesser
7 amounts in order to use the simplified acquisition proce-
8 dures required by subsection (a).

9 “(d) In using simplified acquisition procedures, the
10 head of an executive agency shall promote competition to
11 the maximum extent practicable.”.

12 **SEC. 4012. SMALL BUSINESS RESERVATION.**

13 Section 15(j) of the Small Business Act (15 U.S.C.
14 644(j)) is amended to read as follows:

15 “(j)(1) Each contract for the purchase of goods and
16 services that has an anticipated value in excess of \$2,500
17 but not in excess of the simplified acquisition threshold
18 and that is subject to simplified acquisition procedures
19 prescribed pursuant to section 29 of the Office of Federal
20 Procurement Policy Act shall be reserved exclusively for
21 small business concerns unless the contracting officer is
22 unable to obtain offers from two or more small business
23 concerns that are competitive with market prices and are
24 competitive with regard to the quality and delivery of the
25 goods or services being purchased.

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1 “(2) In carrying out paragraph (1), a contracting of-
 2 ficer shall consider a responsive offer timely received from
 3 an eligible small business offeror.

4 “(3) Nothing in paragraph (1) shall be construed as
 5 precluding an award of a contract with a value not in ex-
 6 cess of the simplified acquisition threshold under the au-
 7 thority of section 8(a) of this Act, section 2323 of title
 8 10, United States Code, or section 712 of the Business
 9 Opportunity Development Reform Act of 1988 (Public
 10 Law 100-656; 15 U.S.C. 644 note).”.

11 **SEC. 4013. FAST PAYMENT UNDER SIMPLIFIED ACQUI-**
 12 **SITION PROCEDURES.**

13 (a) **PAYMENT PROCEDURES.**—The simplified acquisi-
 14 tion procedures described in section 29(a) of the Office
 15 of Federal Procurement Policy Act (as added by section
 16 4011) shall provide for use of the payment terms described
 17 in subsection (b), and for the disbursement of payment
 18 through electronic fund transfer, whenever circumstances
 19 permit.

20 (b) **REQUIRED PAYMENT TERMS.**—The payment
 21 terms for a purchase made pursuant to simplified acquisi-
 22 tion procedures shall require payment, in accordance with
 23 the provisions of chapter 39 of title 31, United States
 24 Code, within 15 days after the date of the receipt of a

1 proper invoice for products delivered or services per-
2 formed, if—

3 (1) in the case of a purchase of property, title
4 to the property will vest in the Government upon de-
5 livery of the property to the Government or to a
6 common carrier; and

7 (2) in the case of property or services for which
8 payment is due before the Government's acceptance
9 of the property or services, the vendor provides com-
10 mercial or other appropriate warranties assuring
11 that the property or services purchased conform to
12 the requirements set forth in the Government's pur-
13 chase offer.

14 **SEC. 4014. PROCUREMENT NOTICE.**

15 (a) **CONTINUATION OF EXISTING NOTICE THRESH-**
16 **OLDS.**—Subsection (a) of section 18 of the Office of Fed-
17 eral Procurement Policy Act (41 U.S.C. 416) is
18 amended—

19 (1) in paragraph (1), by striking out “the small
20 purchase threshold” each place it appears and in-
21 serting in lieu thereof “\$25,000”; and

22 (2) in paragraph (3)(B), by inserting after
23 “(B)” the following: “in the case of a contract or
24 order expected to exceed the simplified acquisition
25 threshold.”

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1 (b) CONTENT OF NOTICE.—Subsection (b) of such
2 section is amended—

3 (1) by striking out “and” at the end of para-
4 graph (4);

5 (2) by striking out the period at the end of
6 paragraph (5) and inserting in lieu thereof a semi-
7 colon; and

8 (3) by adding at the end the following:

9 “(6) in the case of a contract in an amount es-
10 timated to exceed the \$25,000 but not to exceed the
11 simplified acquisition threshold—

12 “(A) a description of the procedures to be
13 used in awarding the contract; and

14 “(B) a statement specifying the periods for
15 prospective offerors and the contracting officer
16 to take the necessary preaward and award ac-
17 tions.”.

18 (c) NOTICE UNDER THE SMALL BUSINESS ACT.—

19 (1) CONTINUATION OF EXISTING NOTICE
20 THRESHOLDS.—Subsection (e) of section 8 of the
21 Small Business Act (15 U.S.C. 637) is amended—

22 (A) in paragraph (1), by striking out “the
23 small purchase threshold” each place it appears
24 and inserting in lieu thereof “\$25,000”; and

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1 (B) in paragraph (3)(B), by inserting after
 2 "(B)" the following: "in the case of a contract
 3 or order estimated to exceed the simplified ac-
 4 quisition threshold,".

5 (2) CONTENT OF NOTICE.—Subsection (f) of
 6 such section is amended—

7 (A) by striking out "and" at the end of
 8 paragraph (4);

9 (B) by striking out the period at the end
 10 of paragraph (5) and inserting in lieu thereof a
 11 semicolon; and

12 (C) by adding at the end the following:

13 "(6) in the case of a contract in an amount es-
 14 timated to exceed the \$25,000 but not to exceed the
 15 simplified acquisition threshold—

16 "(A) a description of the procedures to be
 17 used in awarding the contract; and

18 "(B) a statement specifying the periods for
 19 prospective offerors and the contracting officer
 20 to take the necessary preaward and award ac-
 21 tions.".

22 **SEC. 4015. ELECTRONIC COMMERCE FOR FEDERAL GOV-**

23 **ERNMENT PROCUREMENTS.**

24 (a) DEVELOPMENT AND IMPLEMENTATION OF SYS-
 25 TEM.—The Administrator for Federal Procurement Pol-

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1 icy, in consultation with the heads of appropriate Federal
2 Government agencies having applicable technical and
3 functional expertise, may take appropriate steps to develop
4 and implement a Federal Governmentwide architecture or
5 design for electronic commerce that provides interoper-
6 ability among users.

7 (b) REQUIRED CAPABILITIES.—The requirements
8 analysis prepared to implement the architecture or design
9 of a system of electronic commerce referred to in sub-
10 section (a) shall have the following capabilities:

11 (1) The maximum practicable capability for
12 electronic exchange of such procurement information
13 as solicitations, offers, contracts, purchase orders,
14 invoices, payments, and other contractual documents
15 between the private sector and the Federal Govern-
16 ment.

17 (2) Capabilities that increase the access of busi-
18 nesses, including small business concerns, socially
19 and economically disadvantaged small business con-
20 cerns, and businesses owned predominantly by
21 women, to Federal Government procurement oppor-
22 tunities.

23 (3) Easy access for potential Federal Govern-
24 ment contractors.

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1 (4) Use of nationally and internationally recog-
2 nized data formats that broaden and ease electronic
3 interchange of data.

4 (5) Use of Federal Government systems and
5 networks and industry systems and networks.

6 (c) NOTICE AND SOLICITATION REGULATIONS.—In
7 connection with implementation of the architecture or de-
8 sign referred to in subsection (a), the Federal Acquisition
9 Regulatory Council shall ensure that the Federal Acquisi-
10 tion Regulation contains appropriate notice and solicita-
11 tion provisions applicable to acquisitions conducted
12 through such architecture or design. The provisions shall
13 specify the required form and content of notices of acquisi-
14 tions and the minimum periods for notifications and solici-
15 tations. Each minimum period specified for a notification
16 or solicitation shall afford potential offerors a reasonable
17 opportunity to respond to the notification or solicitation,
18 as the case may be.

19 (d) LIMITATION OF PUBLICATION REQUIREMENT.—
20 The requirement in section 18(a) of the Office of Federal
21 Procurement Policy Act (41 U.S.C. 416(a)) and section
22 8(e) of the Small Business Act (15 U.S.C. 637(e)) for
23 publishing notice of a solicitation in the Commerce Busi-
24 ness Daily shall not apply to acquisitions of a Federal
25 agency or a component of a Federal agency that are made

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1 through electronic commerce and have a value not in ex-
 2 cess of the simplified acquisition threshold if the Adminis-
 3 trator for Federal Procurement Policy certifies that such
 4 agency or component—

5 (1) has fully implemented the architecture or
 6 design referred to in subsection (a); and

7 (2) has procedures in place—

8 (A) to provide notice to potential offerors
 9 in accordance with the requirements of the Fed-
 10 eral Acquisition Regulation prescribed pursuant
 11 to subsection (c); and

12 (B) to ensure that small business concerns
 13 are afforded an opportunity to respond to a so-
 14 licitation of contract offers within the period
 15 specified in the solicitation.

16 (e) DEFINITION.—In this section, the term “sim-
 17 plified acquisition threshold” has the meaning given that
 18 term is section 4(11) of the Office of Federal Procurement
 19 Policy Act (41 U.S.C. 403(11)).

20 **PART III—APPLICABILITY OF LAWS TO ACQUIS-**
 21 **TIONS NOT IN EXCESS OF SIMPLIFIED ACQUI-**
 22 **SITION THRESHOLD**

23 **SEC. 4021. FUTURE ENACTED PROCUREMENT LAWS.**

24 The Office of Federal Procurement Policy Act (41
 25 U.S.C. 401 et seq.), as amended by section 4011, is fur-

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1 ther amended by adding at the end the following new sec-
 2 tion:

3 "APPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT
 4 EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

5 "SEC. 30. (a) IN GENERAL.—The applicability of a
 6 provision of law described in subsection (b) to contracts
 7 not in excess of the simplified acquisition threshold may
 8 be waived on a class basis in the Federal Acquisition Reg-
 9 ulation. Such a waiver shall not apply to a provision of
 10 law that expressly refers to this section and prohibits the
 11 waiver of that provision of law.

12 "(b) REFERENCED LAW.—A provision of law referred
 13 to in subsection (a) is any provision of law enacted after
 14 the date of the enactment of the Federal Acquisition
 15 Streamlining Act of 1994 that, as determined by the Ad-
 16 ministrator for Federal Procurement Policy, sets forth
 17 policies, procedures, requirements, or restrictions for the
 18 procurement of property or services by the Federal Gov-
 19 ernment."

20 SEC. 4022. ARMED SERVICES ACQUISITIONS.

21 (a) REQUIREMENT FOR CONTRACT CLAUSE REGARD-
 22 ING CONTINGENT FEES.—Section 2306(b) of title 10,
 23 United States Code, is amended by adding at the end the
 24 following: "This subsection does not apply to a contract
 25 that is not in excess of the simplified acquisition thresh-
 26 old."

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1 (b) PROHIBITION ON LIMITING SUBCONTRACTOR DI-
2 RECT SALES TO THE UNITED STATES.—Section 2402 of
3 title 10, United States Code, is amended by adding at the
4 end the following new subsection:

5 “(c) This section does not apply to a contract that
6 is not in excess of the simplified acquisition threshold (as
7 defined in section 4(11) of the Office of Federal Procure-
8 ment Policy Act (41 U.S.C. 403(11))).”.

9 (c) AUTHORITY TO EXAMINE BOOKS AND RECORDS
10 OF CONTRACTORS.—Section 2313 of title 10, United
11 States Code, as amended by section 2201, is further
12 amended by adding at the end of subsection (f) the follow-
13 ing:

14 “(2) A contract that is not in excess of the sim-
15 plified acquisition threshold.”.

16 (d) REQUIREMENT TO IDENTIFY SUPPLIERS AND
17 SOURCES OF SUPPLIES.—Section 2384(b) of title 10,
18 United States Code, is amended by adding at the end the
19 following new paragraph:

20 “(3) The regulations prescribed pursuant to para-
21 graph (1) do not apply to a contract that does not exceed
22 the simplified acquisition threshold (as defined in section
23 4(11) of the Office of Federal Procurement Policy Act (41
24 U.S.C. 403(11))).”.

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1 (e) PROHIBITION AGAINST DOING BUSINESS WITH
 2 CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d)
 3 of title 10, United States Code, is amended in the second
 4 sentence by striking out “above” and all that follows and
 5 inserting in lieu thereof “in excess of the simplified acqui-
 6 sition threshold (as defined in section 4(11) of the Office
 7 of Federal Procurement Policy Act (41 U.S.C.
 8 403(11))).”.

9 (f) PREFERENCE FOR USE OF UNITED STATES VES-
 10 SELS FOR TRANSPORTING SUPPLIES OF THE ARMED
 11 FORCES.—Section 2631 of title 10, United States Code,
 12 is amended—

13 (1) by inserting “(a) IN GENERAL.— before
 14 “Only” in the first sentence; and

15 (2) by adding at the end the following:

16 “(b) EXCEPTION.—The requirements of this section
 17 arising out of a contract not in excess of the simplified
 18 acquisition threshold do not apply to transportation of
 19 supplies by entities other than departments or other agen-
 20 cies of the Federal Government.”.

21 SEC. 4023. CIVILIAN AGENCY ACQUISITIONS.

22 (a) REQUIREMENT FOR CONTRACT CLAUSE REGARD-
 23 ING CONTINGENT FEES.—Section 304(a) of the Federal
 24 Property and Administrative Services Act of 1949 (41
 25 U.S.C. 254(a)) is amended by adding at the end the fol-

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1 lowing: "The preceding sentence does not apply to a con-
 2 tract that is not in excess of the simplified acquisition
 3 threshold."

4 (b) PROHIBITION ON LIMITING SUBCONTRACTOR DI-
 5 RECT SALES TO THE UNITED STATES.—Section 303G of
 6 the Federal Property and Administrative Services Act of
 7 1949 (41 U.S.C. 253g) is amended by adding at the end
 8 the following new subsection:

9 "(c) This section does not apply to a contract that
 10 is not in excess of the simplified acquisition threshold."

11 (c) AUTHORITY TO EXAMINE BOOKS AND RECORDS
 12 OF CONTRACTORS.—Section 304B of the Federal Prop-
 13 erty and Administrative Services Act of 1949, as added
 14 by section 2251(a), is amended by adding at the end of
 15 subsection (f) the following:

16 "(2) A contract that is not in excess of the sim-
 17 plified acquisition threshold."

18 SEC. 4024. ACQUISITIONS GENERALLY.

19 (a) LIMITATION ON USE OF FUNDS TO INFLUENCE
 20 CERTAIN FEDERAL ACTIONS.—Section 1352(e)(2)(B) of
 21 title 31, United States Code, is amended by striking out
 22 "\$100,000" and inserting in lieu thereof "the simplified
 23 acquisition threshold (as defined in section 4(11) of the
 24 Office of Federal Procurement Policy Act (41 U.S.C.
 25 403(11)))".

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1 (b) REQUIREMENT FOR CONTRACT CLAUSE RELAT-
 2 ING TO KICKBACKS.—Section 7 of the Anti-Kickback Act
 3 of 1986 (41 U.S.C. 57) is amended by adding at the end
 4 the following new subsection:

5 “(d) Subsections (a) and (b) do not apply to a prime
 6 contract that is not in excess of the simplified acquisition
 7 threshold (as defined in section 4(11) of the Office of Fed-
 8 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

9 (c) MILLER ACT.—

10 (1) IN GENERAL.—

11 (A) CONTRACTS NOT EXCEEDING SIM-
 12 PLIFIED ACQUISITION THRESHOLD.—The Act
 13 of August 24, 1935 (40 U.S.C. 270a et seq.),
 14 commonly referred to as the “Miller Act”, is
 15 amended by adding at the end the following
 16 new section:

17 “SEC. 5. This Act does not apply to a contract in
 18 an amount that is not in excess of the simplified acquisi-
 19 tion threshold (as defined in section 4(11) of the Office
 20 of Federal Procurement Policy Act (41 U.S.C.
 21 403(11))).”.

22 (B) CONFORMING AMENDMENT.—Sub-
 23 section (a) of the first section of such Act is
 24 amended by striking out “, exceeding \$25,000
 25 in amount,”.

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1 (2) ALTERNATIVE PAYMENT PROTECTIONS.—

2 (A) PROTECTIONS TO BE SPECIFIED IN
 3 THE FAR.—The Federal Acquisition Regulation
 4 shall provide alternatives to payment bonds as
 5 payment protections for suppliers of labor and
 6 materials under contracts referred to in sub-
 7 paragraph (C).

8 (B) USE OF AUTHORIZED PROTECTIONS.—

9 The contracting officer for a contract shall—

10 (i) select, from among the payment
 11 protections provided for in the Federal Ac-
 12 quisition Regulation pursuant to subpara-
 13 graph (A), one or more payment protec-
 14 tions which the offeror awarded the con-
 15 tract is to submit to the Federal Govern-
 16 ment for the protection of suppliers of
 17 labor and materials for such contract; and

18 (ii) specify in the solicitation of offers
 19 for such contract the payment protection
 20 or protections so selected.

21 (C) COVERED CONTRACTS.—

22 (i) APPLICABILITY.—The regulations
 23 required under subparagraph (A) and the
 24 requirements of subparagraph (B) apply
 25 with respect to contracts referred to in

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1 subsection (a) of the first section of the
 2 Miller Act that are in excess of \$25,000
 3 but not in excess of the simplified acquisi-
 4 tion threshold (as defined in section 4(11)
 5 of the Office of Federal Procurement Pol-
 6 icy Act (41 U.S.C. 403(11))).

7 (ii) MILLER ACT REFERENCE.—The
 8 Miller Act referred to in subparagraph (A)
 9 is the Act of August 24, 1935 (40 U.S.C.
 10 270a et seq.), commonly referred to as the
 11 “Miller Act”.

12 (d) CONTRACT WORK HOURS AND SAFETY STAND-
 13 ARDS ACT.—

14 (1) IN GENERAL.—Section 103 of the Contract
 15 Work Hours and Safety Standards Act (40 U.S.C.
 16 329) is amended by adding at the end the following
 17 new subsection:

18 “(c) This title does not apply to a contract in an
 19 amount that is not in excess of the simplified acquisition
 20 threshold (as defined in section 4(11) of the Office of Fed-
 21 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

22 (2) CONFORMING AMENDMENT.—Section
 23 107(a) of such Act (40 U.S.C. 333(a)) is amended
 24 by inserting after “It shall be a condition of each

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1 contract" the following: "(other than a contract re-
2 ferred to in section 103(c))".

3 (e) DRUG-FREE WORKPLACE ACT OF 1988.—Section
4 5152(a)(1) of the Drug-Free Workplace Act of 1988 (sub-
5 title D of title V of the Anti-Drug Abuse Act of 1988;
6 Public Law 100-690; 41 U.S.C. 701(a)(1)) is amended
7 by striking out "of \$25,000 or more from any Federal
8 agency" and inserting in lieu thereof "in excess of the sim-
9 plified acquisition threshold (as defined in section 4(11)
10 of such Act (41 U.S.C. 403(11))) by any Federal agency".

11 (f) MERCHANT MARINE ACT, 1936.—Section 901(b)
12 of the Merchant Marine Act, 1936 (46 U.S.C. 1241(b))
13 is amended by adding at the end the following new para-
14 graph:

15 "(3) The requirements of paragraph (1) arising out
16 of a contract not in excess of the simplified acquisition
17 threshold (as defined in section 4(11) of the Office of Fed-
18 eral Procurement Policy Act (41 U.S.C. 403(11))) do not
19 apply to transportation of supplies by entities other than
20 departments or other agencies of the Federal Govern-
21 ment."

22 (g) CERTAIN PROCUREMENT INTEGRITY REQUIRE-
23 MENTS.—

24 (1) CERTIFICATION REQUIREMENT.—Sub-
25 section (e)(7)(A) of section 27 of the Office of Fed-

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1 eral Procurement Policy Act (41 U.S.C. 423) is
 2 amended by striking out "\$100,000" and inserting
 3 in lieu thereof "the simplified acquisition threshold".

4 (2) CONTRACT CLAUSE REQUIREMENT.—Sub-
 5 section (g)(1) of such section is amended by insert-
 6 ing after "awarded by a Federal agency" the follow-
 7 ing: "(other than a contract in an amount that is
 8 not in excess of the simplified acquisition thresh-
 9 old)".

10 (h) SOLID WASTE DISPOSAL ACT.—Section 6002(a)
 11 of the Solid Waste Disposal Act (42 U.S.C. 6962(a)) is
 12 amended by striking out all that follows "with respect to
 13 any" and inserting in lieu thereof "contract in excess of
 14 the simplified acquisition threshold (as defined in section
 15 4(11) of the Office of Federal Procurement Policy Act (41
 16 U.S.C. 403(11)))".

17 PART IV—CONFORMING AMENDMENTS

18 SEC. 4071. ARMED SERVICES ACQUISITIONS.

19 (a) SIMPLIFIED ACQUISITION PROCEDURES.—Sec-
 20 tion 2304(g) of title 10, United States Code, is amended—

21 (1) in paragraph (1), by striking out "small
 22 purchases of property and services" and inserting in
 23 lieu thereof "purchases of property and services not
 24 in excess of the simplified acquisition threshold";

25 (2) by striking out paragraph (2);

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1 (3) by redesignating paragraphs (3) and (4) as
2 paragraphs (2) and (3), respectively;

3 (4) in paragraph (2), as so redesignated—

4 (A) by striking out “small purchase
5 threshold” and inserting in lieu thereof “sim-
6 plified acquisition threshold”; and

7 (B) by striking out “small purchase proce-
8 dures” and inserting in lieu thereof “simplified
9 procedures”; and

10 (5) in paragraph (3), as redesignated by para-
11 graph (3), by striking out “small purchase proce-
12 dures” and inserting in lieu thereof “the simplified
13 procedures”.

14 (b) SOLICITATION CONTENT REQUIREMENT.—Sec-
15 tion 2305(a)(2) of title 10, United States Code, is amend-
16 ed by striking out “small purchases)” in the matter above
17 subparagraph (A) and inserting in lieu thereof “purchases
18 not in excess of the simplified acquisition threshold)”.

19 (c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A)
20 of title 10, United States Code, is amended by striking
21 out “small purchase threshold” and inserting in lieu there-
22 of “simplified acquisition threshold”.

23 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

24 (a) SIMPLIFIED ACQUISITION PROCEDURES.—

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1 (1) PROPERTY AND SERVICES GENERALLY.—
2 Section 303(g) of the Federal Property and Admin-
3 istrative Services Act of 1949 (41 U.S.C. 253(g)) is
4 amended—

5 (A) in paragraph (1), by striking out
6 “small purchases of property and services” and
7 inserting in lieu thereof “purchases of property
8 and services not in excess of the simplified ac-
9 quisition threshold”;

10 (B) by striking out paragraphs (2) and
11 (5);

12 (C) by redesignating paragraphs (3) and
13 (4) as paragraphs (2) and (3), respectively;

14 (D) in paragraph (2), as so redesignated—

15 (i) by striking out “small purchase
16 threshold” and inserting in lieu thereof
17 “simplified acquisition threshold”; and

18 (ii) by striking out “small purchase
19 procedures” and inserting in lieu thereof
20 “simplified procedures”; and

21 (E) in paragraph (3), as redesignated by
22 subparagraph (C), by striking out “small pur-
23 chase procedures” and inserting in lieu thereof
24 “the simplified procedures”.

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1 (2) **LEASEHOLDS.**—Section 210 of the Federal
2 Property and Administrative Services Act of 1949
3 (40 U.S.C. 490) is amended by adding at the end
4 the following new subsection:

5 “(k)(1) Regulations prescribed by the Administrator
6 shall provide special simplified procedures for acquisitions
7 of leasehold interests in real property at rental rates that
8 do not exceed the simplified acquisition threshold.

9 “(2) For purposes of paragraph (1), the rental rate
10 or rates under a multiyear lease do not exceed the sim-
11 plified acquisition threshold if the average annual amount
12 of the rent payable for the period of the lease does not
13 exceed the simplified acquisition threshold.

14 “(3) In this subsection, the term ‘simplified acqui-
15 sition threshold’ has the meaning given that term in section
16 4(11) of the Office of Federal Procurement Policy Act (41
17 U.S.C. 403(11)).”.

18 (b) **SOLICITATION CONTENT REQUIREMENT.**—Sec-
19 tion 303A(b) of the Federal Property and Administrative
20 Services Act of 1949 (41 U.S.C. 253a(b)) is amended by
21 striking out “small purchases)” in the matter above para-
22 graph (1) and inserting in lieu thereof “purchases not in
23 excess of the simplified acquisition threshold)”.

24 (c) **COST TYPE CONTRACTS.**—Section 304(b) of the
25 Federal Property and Administrative Services Act of 1949

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1 (41 U.S.C. 254(b)), as amended by section 1071, is fur-
 2 ther amended in the second sentence by striking out "ei-
 3 ther \$25,000" and inserting in lieu thereof "either the
 4 simplified acquisition threshold".

5 **SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY**
 6 **ACT.**

7 Section 19(a) of the Office of Federal Procurement
 8 Policy Act (41 U.S.C. 417(a)) is amended by striking out
 9 "procurements, other than small purchases," and insert-
 10 ing in lieu thereof "procurements in excess of the sim-
 11 plified acquisition threshold".

12 **SEC. 4074. SMALL BUSINESS ACT.**

13 (a) **DEFINITION.**—Section 3(m) of the Small Busi-
 14 ness Act (15 U.S.C. 632(m)) is amended by striking out
 15 "'small purchase threshold'" and inserting in lieu thereof
 16 "'simplified acquisition threshold'".

17 (b) **USE OF SIMPLIFIED ACQUISITION THRESHOLD**
 18 **TERM.**—Section 8(d)(2)(A) of the Small Business Act (15
 19 U.S.C. 637(d)(2)(A)) is amended by striking out "small
 20 purchase threshold" and inserting in lieu thereof "sim-
 21 plified acquisition threshold".

22 **PART V—REVISION OF REGULATIONS**

23 **SEC. 4081. REVISION REQUIRED.**

24 (a) **FEDERAL ACQUISITION REGULATION.**—The Fed-
 25 eral Acquisition Regulatory Council established by section

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1 25(a) of the Office of Federal Procurement Policy Act (41
2 U.S.C. 421(a)) shall review the Federal Acquisition Regu-
3 lation to identify regulations that are applicable to acquisi-
4 tions in excess of a specified amount that is less than
5 \$100,000. The Council shall amend the regulations so
6 identified as necessary to provide that such regulations do
7 not apply to acquisitions that are not in excess of the sim-
8 plified acquisition threshold. The preceding sentence does
9 not apply in the case of a regulation for which such an
10 amendment would not be in the national interest, as deter-
11 mined by the Council.

12 (b) SUPPLEMENTAL REGULATIONS.—The head of
13 each Federal agency that has issued regulations, policies,
14 or procedures referred to in section 25(c)(2) of the Office
15 of Federal Procurement Policy Act (41 U.S.C. 421(c)(2))
16 shall identify any such regulations, policies, or procedures
17 that are applicable to acquisitions in excess of a specified
18 amount that is less than \$100,000. The agency head shall
19 amend the regulations so identified as necessary to provide
20 that such regulations, policies, and procedures do not
21 apply to acquisitions that are not in excess of the sim-
22 plified acquisition threshold. The preceding sentence does
23 not apply in the case of a regulation, policy, or procedure
24 for which such an amendment would not be in the national
25 interest, as determined by the agency head.

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1 (c) COMPLETION OF ACTIONS.—All actions under
 2 this section shall be completed not later than 180 days
 3 after the date of the enactment of this Act.

4 (d) DEFINITIONS.—In this section:

5 (1) The term “simplified acquisition threshold”
 6 has the meaning given such term in section 4(11) of
 7 the Office of Federal Procurement Policy Act (41
 8 U.S.C. 403(11)), as amended by section 4001.

9 (2) The term “Federal agency” has the mean-
 10 ing given such term in section 3(b) of the Federal
 11 Property and Administrative Services Act of 1949
 12 (41 U.S.C. 472(b)).

13 **Subtitle B—Socioeconomic and** 14 **Small Business Laws**

15 **SEC. 4101. ARMED SERVICES ACQUISITIONS.**

16 (a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO
 17 CONSTRUCTION OF NAVAL VESSELS.—Section 7299 of
 18 title 10, United States Code, is amended to read as fol-
 19 lows: “No contract for the construction, alteration, fur-
 20 nishing, or equipping of a naval vessel shall be subject to
 21 the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly
 22 referred to as the ‘Davis-Bacon Act’, or to the Service
 23 Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the
 24 President determines that such requirement is in the in-
 25 terest of national defense.”.

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1 (b) CLERICAL AMENDMENTS.—

2 (1) SECTION HEADING.—The heading of such
3 section is amended to read as follows:

4 “§ 7299. Contracts: applicability of certain labor
5 laws”.

6 (2) TABLE OF SECTIONS.—The item relating to
7 such section in the table of sections at the beginning
8 of chapter 633 of title 10, United States Code, is
9 amended to read as follows:

“7299. Contracts: applicability of certain labor laws.”.

10 SEC. 4102. ACQUISITIONS GENERALLY.

11 (a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO
12 CONSTRUCTION OF VESSELS.—No contract for the con-
13 struction, alteration, furnishing, or equipping of a vessel
14 shall be subject to the Act of March 3, 1931 (40 U.S.C.
15 276a(a)), commonly referred to as the ‘Davis-Bacon Act’,
16 or to the Service Contract Act of 1965 (41 U.S.C. 351
17 et seq.), unless the President determines that such re-
18 quirement is in the interest of the United States.

19 (b) REPEAL OF EXECUTED REPORTING REQUIRE-
20 MENT.—Section 306 of the Trade Agreements Act of 1979
21 (19 U.S.C. 2516) is repealed.

22 (c) WALSH-HEALEY ACT.—

23 (1) REPEAL OTHER THAN FOR CERTAIN DEFI-
24 NITIONAL PURPOSES.—The Act of June 30, 1936

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1 (41 U.S.C. 35 et seq.), commonly referred to as the
2 "Walsh-Healey Act", is amended to read as follows:

3 "SECTION 1. (a) The Secretary of Labor may pre-
4 scribe in regulations the standards for determining wheth-
5 er a contractor is a manufacturer of or a regular dealer
6 in materials, supplies, articles, or equipment to be manu-
7 factured or used in the performance of a contract entered
8 into by any executive department, independent establish-
9 ment, or other agency or instrumentality of the United
10 States, or by the District of Columbia, or by any corpora-
11 tion all the stock of which is beneficially owned by the
12 United States, for the manufacture or furnishing of mate-
13 rials, supplies, articles, and equipment.

14 "(b) Any interested person shall have the right of ju-
15 dicial review of any legal question regarding the interpre-
16 tation of the terms 'regular dealer' and 'manufacturer',
17 as defined pursuant to subsection (a)."

18 (2) CONFORMING AMENDMENT.—Section
19 2304(h) of title 10, United States Code, is amended
20 to read as follows:

21 "(h) For the purposes of the Act entitled 'An Act
22 relating to the rate of wages for laborers and mechanics
23 employed on public buildings of the United States and the
24 District of Columbia by contractors and subcontractors,
25 and for other purposes', approved March 3, 1931 (com-

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1 monly referred to as the 'Davis-Bacon Act') (40 U.S.C.
 2 276a et seq.), purchases or contracts awarded after using
 3 procedures other than sealed-bid procedures shall be treat-
 4 ed as if they were made with sealed-bid procedures."

5 (d) REPEAL OF REDUNDANT REQUIREMENT RE-
 6 GARDING APPLICABILITY OF THE DAVIS-BACON ACT AND
 7 THE WALSH-HEALEY ACT.—Section 308 of the Federal
 8 Property and Administrative Services Act of 1949 (41
 9 U.S.C. 258) is repealed.

10 SEC. 4103. ACQUISITIONS FROM SMALL BUSINESSES.

11 (a) SET-ASIDE PRIORITY.—Section 15 of the Small
 12 Business Act (15 U.S.C. 644) is amended by striking out
 13 subsections (e) and (f).

14 (b) CERTIFICATE OF COMPETENCE.—Section 804 of
 15 Public Law 103-484 (106 Stat. 2447; 10 U.S.C. 2305
 16 note) is repealed.

17 SEC. 4104. CONTRACTING PROGRAM FOR CERTAIN SMALL
 18 BUSINESS CONCERNS.

19 (a) PROCUREMENT PROCEDURES AUTHORIZED.—
 20 Section 8 of the Small Business Act (15 U.S.C. 637) is
 21 amended by inserting after subsection (b) the following
 22 new subsection:

23 "(c)(1) To facilitate the attainment of a goal for the
 24 participation of small business concerns owned and con-
 25 trolled by socially and economically disadvantaged individ-

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1 uals that is established for a Federal agency pursuant to
 2 section 15(g)(1), the head of the agency may enter into
 3 contracts using—

4 “(A) less than full and open competition by re-
 5 stricting the competition for such awards to small
 6 business concerns owned and controlled by socially
 7 and economically disadvantaged individuals de-
 8 scribed in subsection (d)(3)(C) of this section; and

9 “(B) a price evaluation preference not in excess
 10 of 10 percent when evaluating an offer received from
 11 such a small business concern as the result of an un-
 12 restricted solicitation.

13 “(2) Paragraph (1) does not apply to the Department
 14 of Defense.”

15 (b) IMPLEMENTATION THROUGH THE FEDERAL AC-
 16QUISITION REGULATION.—

17 (1) IN GENERAL.—The Federal Acquisition
 18 Regulation shall be amended to provide for uniform
 19 implementation of the authority provided in section
 20 8(c) of the Small Business Act, as added by sub-
 21 section (a).

22 (2) MATTERS TO BE ADDRESSED.—The provi-
 23 sions of the Federal Acquisition Regulation pre-
 24 scribed pursuant to paragraph (1) shall include—

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1 (A) conditions for the use of advance pay-
2 ments;

3 (B) provisions for contract payment terms
4 that provide for—

5 (i) accelerated payment for work per-
6 formed during the period for contract per-
7 formance; and

8 (ii) full payment for work performed;

9 (C) guidance on how contracting officers
10 may use, in solicitations for various classes of
11 products or services, a price evaluation pref-
12 erence pursuant to section 8(c)(1)(B) of the
13 Small Business Act, as added by subsection (a),
14 to provide a reasonable advantage to small busi-
15 ness concerns owned and controlled by socially
16 and economically disadvantaged individuals
17 without effectively eliminating any participation
18 of other small business concerns; and

19 (D)(i) procedures for a person to request
20 the head of Federal agency to determine wheth-
21 er the use of competitions restricted to small
22 business concerns owned and controlled by so-
23 cially and economically disadvantaged individ-
24 uals at a contracting activity of such agency
25 has caused a particular industry category to

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1 bear a disproportionate share of the contracts
 2 awarded to attain the goal established for that
 3 contracting activity; and

4 (ii) guidance for limiting the use of such
 5 restricted competitions in the case of any con-
 6 tracting activity and class of contracts deter-
 7 mined in accordance with such procedures to
 8 have caused a particular industry category to
 9 bear a disproportionate share of the contracts
 10 awarded to attain the goal established for that
 11 contracting activity.

12 (c) TERMINATION.—Section 8(c) of the Small Busi-
 13 ness Act, as added by subsection (a), shall cease to be
 14 effective at the end of September 30, 1999.

15 Subtitle C—Miscellaneous

16 Acquisition Laws

17 SEC. 4151. PROHIBITION ON USE OF FUNDS FOR DOCU- 18 MENTING ECONOMIC OR EMPLOYMENT IM- 19 PACT OF CERTAIN ACQUISITION PROGRAMS.

20 (a) REVISION AND CODIFICATION.—

21 (1) IN GENERAL.—Subchapter I of chapter 134
 22 of title 10, United States Code, is amended by add-
 23 ing at the end the following new section:

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1 **"§ 2247. Prohibition on use of funds for documenting**
 2 **economic or employment impact of cer-**
 3 **tain acquisition programs**

4 "No funds appropriated by the Congress may be obli-
 5 gated or expended to assist any contractor of the Depart-
 6 ment of Defense in preparing any material, report, lists,
 7 or analysis with respect to the actual or projected eco-
 8 nomic or employment impact in a particular State or con-
 9 gressional district of an acquisition program for which all
 10 research, development, testing, and evaluation has not
 11 been completed."

12 (2) CLERICAL AMENDMENT.—The table of sec-
 13 tions at the beginning of such subchapter is amend-
 14 ed by adding at the end the following new item:

"2247. Prohibition on use of funds for documenting economic or employment
 impact of certain acquisition programs."

15 (b) REPEAL OF SUPERSEDED LAW.—Section 9048 of
 16 Public Law 102-396 (106 Stat. 1913) is repealed.

17 SEC. 4152. RESTRICTION ON USE OF NONCOMPETITIVE
 18 PROCEDURES FOR PROCUREMENT FROM A
 19 PARTICULAR SOURCE.

20 (a) ARMED SERVICES ACQUISITIONS.—Section 2304
 21 of title 10, United States Code, as amended by section
 22 1005(b), is further amended—

23 (1) in subsection (c)(5), by inserting "subject to
 24 subsection (j)," after "(5)"; and

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1 (2) by adding at the end the following new sub-
 2 section:

3 “(j)(1) It is the policy of Congress that no legislation
 4 should be enacted that requires a procurement to be made
 5 from a specified non-Federal Government source.

6 “(2) A provision of law may not be construed as re-
 7 quiring a procurement to be made from a specified non-
 8 Federal Government source unless that provision of law—

9 “(A) specifically refers to this subsection;

10 “(B) specifically identifies the particular non-
 11 Federal Government source involved; and

12 “(C) specifically states that the procurement
 13 from that source is required by such provision of law
 14 in contravention of the policy set forth in paragraph
 15 (1).”

16 (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303
 17 of the Federal Property and Administrative Services Act
 18 of 1949 (41 U.S.C. 253) is amended—

19 (1) in subsection (c)(5), by inserting “subject to
 20 subsection (h),” after “(5)”; and

21 (2) by adding at the end the following new sub-
 22 section:

23 “(h)(1) It is the policy of Congress that no legislation
 24 should be enacted that requires a procurement to be made
 25 from a specified non-Federal Government source.

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1 “(2) A provision of law may not be construed as re-
2 quiring a procurement to be made from a specified non-
3 Federal Government source unless that provision of law—
4 “(A) specifically refers to this subsection;
5 “(B) specifically identifies the particular non-
6 Federal Government source involved; and
7 “(C) specifically states that the procurement
8 from that source is required by such provision of law
9 in contravention of the policy set forth in paragraph
10 (1).”.

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1 **TITLE V—ACQUISITION**
 2 **MANAGEMENT**
 3 **Subtitle A—Armed Services**
 4 **Acquisitions**

5 **SEC. 5001. PERFORMANCE BASED MANAGEMENT.**

6 (a) **POLICY AND GOALS FOR PERFORMANCE BASED**
 7 **MANAGEMENT OF PROGRAMS.—**

8 (1) **IN GENERAL.—**Chapter 131 of title 10,
 9 United States Code, is amended by adding at the
 10 end the following new section:

11 **“§ 2219. Performance based management: acquisition**
 12 **programs**

13 “(a) **CONGRESSIONAL POLICY.—**It is the policy of
 14 Congress that—

15 “(1) the Department of Defense should achieve,
 16 on average, 90 percent of the cost and schedule
 17 goals established for the research and development
 18 programs and acquisition programs of the Depart-
 19 ment of Defense without reducing the performance
 20 or capabilities of the items being acquired; and

21 “(2) the average period necessary for converting
 22 an emerging technology into initial operational capa-
 23 bility for the Department of Defense should not ex-
 24 ceed 8 years.

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1 “(b) ESTABLISHMENT OF GOALS.—(1) The Sec-
 2 retary of Defense shall approve or define the cost, per-
 3 formance, and schedule goals for major defense acquisition
 4 programs of the Department of Defense.

5 “(2) The Comptroller of the Department of Defense
 6 shall evaluate the cost goals proposed for each major de-
 7 fense acquisition program of the Department.

8 “(c) IDENTIFICATION OF NONCOMPLIANT PRO-
 9 GRAMS.—Whenever it is necessary to do so in order to
 10 implement the policy set out in subsection (a), the Sec-
 11 retary of Defense shall—

12 “(1) identify and consider whether there is a
 13 continuing need for programs that are significantly
 14 behind schedule, over budget, or not in compliance
 15 with performance or capability requirements taking
 16 into consideration—

17 “(A) the needs of the Department known
 18 as of the time of consideration;

19 “(B) the state of the technology or tech-
 20 nologies relevant to the programs and to the
 21 needs of the Department;

22 “(C) the estimated costs and projected
 23 schedules necessary for the completion of such
 24 programs; and

25 “(D) other pertinent information; and

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1 “(2) identify existing and potential research
2 and development programs and acquisition programs
3 that are suitable alternatives for programs consid-
4 ered pursuant to paragraph (1).

5 “(d) ANNUAL REPORTING REQUIREMENT.—The Sec-
6 retary of Defense shall include in the annual report sub-
7 mitted to Congress pursuant to section 113(c) of this title
8 an assessment of the progress made in implementing the
9 policy stated in subsection (a). The Secretary shall use
10 data from existing management systems in making the as-
11 sessment.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of such chapter is amended
14 by adding at the end the following new item:

“2219. Performance based management: acquisition programs.”.

15 (b) ENHANCED SYSTEM OF PERFORMANCE INCEN-
16 TIVES.—Within one year after the date of the enactment
17 of this Act, the Secretary of Defense shall review the in-
18 centives and personnel actions available to the Secretary
19 for encouraging excellence in the defense acquisition
20 workforce and provide an enhanced system of incentives
21 for the encouragement of excellence in such workforce.
22 The enhanced system of incentives shall, to the maximum
23 extent consistent with applicable law—

24 (1) relate pay to performance (including the ex-
25 tent to which the performance of personnel in such

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1 workforce contributes to achieving the cost goals,
2 schedule goals, and performance goals established
3 for acquisition programs of the department pursuant
4 to section 2219(b) of title 10, as added by sub-
5 section (a)); and

6 (2) provide for consideration, in personnel eval-
7 uations and promotion decisions, of the extent to
8 which the performance of personnel in such
9 workforce contributes to achieving the cost goals,
10 schedule goals, and performance goals established
11 for acquisition programs of the department pursuant
12 to section 2219(b) of title 10, United States Code,
13 as added by subsection (a).

14 (c) RECOMMENDED LEGISLATION.—Not later than
15 one year after the date of the enactment of this Act, the
16 Secretary of Defense shall submit to Congress any rec-
17 ommended legislation that the Secretary considers nec-
18 essary to carry out section 2219 of title 10, United States
19 Code, as added by subsection (a), and otherwise to facili-
20 tate and enhance management of Department of Defense
21 acquisition programs and the defense acquisition
22 workforce on the basis of performance.

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1 determines whether the program should
 2 continue to be carried out beyond product
 3 integration and development, and decides
 4 whether to commit to further development,
 5 to require further prototyping, or to termi-
 6 nate the program.

7 (B) Consideration of the potential benefits,
 8 affordability, needs, and risks of an acquisition
 9 program in the review of the acquisition pro-
 10 gram.

11 **SEC. 8003. DEFENSE ACQUISITION PILOT PROGRAM DES-**
 12 **IGNATIONS.**

13 (a) **PROGRAMS AND WAIVERS.**—The National De-
 14 fense Authorization Act for Fiscal Year 1994 (Public Law
 15 103-160) is amended by inserting the following new sec-
 16 tion at the end of subtitle D of title VIII:

17 **"SEC. 840. DEFENSE ACQUISITION PILOT PROGRAM DES-**
 18 **IGNATIONS.**

19 **"(a) ELIGIBLE PROGRAMS.**—The Secretary of De-
 20 fense is authorized to designate the following defense ac-
 21 quisition programs for participation in the defense acqui-
 22 sition pilot program authorized by section 809 of the Na-
 23 tional Defense Authorization Act for Fiscal Year 1991 (10
 24 U.S.C. 2430 note):

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1 (ii) is usually completed within 6 to
2 36 months; and

3 (iii) produces sufficient numbers of
4 prototypes to assess operational utility.

5 (C) Product integration, development, and
6 testing which—

7 (i) includes full-scale development,
8 operational testing, and integration of
9 components; and

10 (ii) is usually completed within 1 to 5
11 years.

12 (D) Production, integration into existing
13 systems, or production and integration into ex-
14 isting systems.

15 (2) An acquisition program approval process for
16 major program decisions which consists of the fol-
17 lowing:

18 (A) One major decision point—

19 (i) which occurs for an acquisition
20 program before the program proceeds into
21 product integration and development; and

22 (ii) at which the Under Secretary of
23 Defense for Acquisition and Technology, in
24 consultation with the Vice Chairman of the
25 Joint Chiefs of Staff reviews the program,

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1 determines whether the program should
 2 continue to be carried out beyond product
 3 integration and development, and decides
 4 whether to commit to further development,
 5 to require further prototyping, or to termi-
 6 nate the program.

7 (B) Consideration of the potential benefits,
 8 affordability, needs, and risks of an acquisition
 9 program in the review of the acquisition pro-
 10 gram.

11 **SEC. 8003. DEFENSE ACQUISITION PILOT PROGRAM DES-**
 12 **IGNATIONS.**

13 (a) **PROGRAMS AND WAIVERS.**—The National De-
 14 fense Authorization Act for Fiscal Year 1994 (Public Law
 15 103-160) is amended by inserting the following new sec-
 16 tion at the end of subtitle D of title VIII:

17 **"SEC. 840. DEFENSE ACQUISITION PILOT PROGRAM DES-**
 18 **IGNATIONS.**

19 **"(a) ELIGIBLE PROGRAMS.**—The Secretary of De-
 20 fense is authorized to designate the following defense ac-
 21 quisition programs for participation in the defense acquisi-
 22 tion pilot program authorized by section 809 of the Na-
 23 tional Defense Authorization Act for Fiscal Year 1991 (10
 24 U.S.C. 2430 note):

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1 “(1) Defense Personnel Support Center medi-
2 cal, clothing and textile, and subsistence programs
3 with respect to the following:

4 “(A) All contracts for processed fruits and
5 vegetables and frozen seafood items for both
6 depot stock and direct vendor delivery.

7 “(B) All contracts in the subsistence prime
8 vendor program for grocery items.

9 “(C) All contracts in the Mail Order Phar-
10 macy Program, the prime vendor programs for
11 pharmaceuticals and for medical surgical items
12 for delivery to military hospitals.

13 “(D) All contracts in the medical electronic
14 commerce program for acquisition for depot
15 stock and direct vendor delivery.

16 “(E) All contracts for the following items:
17 dress coats (small lots), dress coats, duffel
18 bags, Navy work clothing, general purpose
19 tents, suitcases, gloves for electrical workers,
20 boot flyers, socks, drawers, undershirts, and
21 items offered under the Broad Agency An-
22 nouncements for Clothing and Textiles Ad-
23 vanced Business Practices Demonstration Pro-
24 gram.

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1 “(2) The Fire Support Combined Arms Tactical
2 Trainer program with respect to all contracts di-
3 rectly related to the procurement of a training sys-
4 tem (including related hardware, software, and sub-
5 systems) to perform collective training of field artil-
6 lery gunnery team components with development of
7 software as required to generate the training exer-
8 cises and component interfaces.

9 “(3) The Joint Direct Attack Munition pro-
10 gram (JDAM I) with respect to all contracts directly
11 related to the development and procurement of a
12 strap-on guidance kit, using an inertially guided,
13 Global Positioning System updated guidance kit for
14 inventory 1,000 and 2,000 pound bombs.

15 “(4) The Joint Primary Aircraft Training Sys-
16 tem (JPATS) with respect to all contracts directly
17 related to the acquisition of a new primary trainer
18 aircraft to fulfill Air Force and Navy joint under-
19 graduate aviation training requirements, and an as-
20 sociated ground-based training system consisting of
21 air crew training devices (simulators), courseware, a
22 Training Management System, and contractor sup-
23 port for the life of the system.

24 “(5) The Commercial Derivatives Aircraft pro-
25 gram with respect to all contracts directly related to

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1 the acquisition or upgrading of civil-derivative air-
 2 craft for use in (A) foreign military sales of Airborne
 3 Warning and Control Systems to foreign govern-
 4 ments with modifications of a type customarily pro-
 5 vided to commercial customers, or (B) future Air
 6 Force airlift and tanker requirements.

7 “(6) The Commercial Derivative Engine pro-
 8 gram with respect to all contracts directly related to
 9 the acquisition of (A) commercially derived engines
 10 (including spare engines), logistics support equip-
 11 ment, technical orders, management data, and initial
 12 spare parts for use in the C-17A production line,
 13 and (B) commercially derived engines to support the
 14 purchase of commercial-derivative aircraft to meet
 15 future Air Force airlift and tanker requirements, in-
 16 cluding engine replacement and upgrades.

17 “(b) WAIVER AUTHORITY.—Subject to section 809(c)
 18 of the National Defense Authorization Act for Fiscal Year
 19 1991, the Secretary of Defense is authorized—

20 “(1) to apply any amendment or repeal of a
 21 provision of law made in the Federal Acquisition
 22 Streamlining Act of 1994 to the programs described
 23 in subsection (a) before the effective date of such
 24 amendment or repeal; and

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1 “(2) to apply to a procurement of noncommer-
2 cial items under such programs—

3 “(A) any authority provided in such Act
4 (or in an amendment made by a provision of
5 such Act) to waive a provision of law in the
6 case of commercial items, and

7 “(B) any exception applicable under such
8 Act (or an amendment made by a provision of
9 such Act) in the case of commercial items,

10 before the effective date of such provision (or
11 amendment) to the extent that the Secretary deter-
12 mines necessary to test the application of such waiv-
13 er or exception to procurements of noncommercial
14 items.

15 “(c) PILOT PROGRAM IMPLEMENTATION.—In exer-
16 cising the authority provided in section 809 of the Na-
17 tional Defense Authorization Act for 1991, and in accord-
18 ance with sections 833 through 839 of this Act, the Sec-
19 retary of Defense, shall take the following actions:

20 “(1) MISSION-ORIENTED PROGRAM MANAGE-
21 MENT.—For one or more of the defense acquisition
22 programs designated for participation in the defense
23 acquisition pilot program, prescribe and implement
24 procedures which—

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1 “(A) provide for interaction between the
2 program manager and the commander of the
3 operational command responsible for the re-
4 quirement for the equipment acquired;

5 “(B) include provisions for a determination
6 by the commander that items proposed for pro-
7 curement fulfill the need defined in approved
8 requirements documents; and

9 “(C) may include a role for the operational
10 commander in decision making for program
11 milestone decisions and performance of accept-
12 ance testing of items acquired.

13 “(2) SAVINGS OBJECTIVES.—Not later than 45
14 days after the date of enactment of the Federal Ac-
15 quisition Streamlining Act of 1994, identify for each
16 defense acquisition program participating in the
17 pilot program quantitative measures and goals for
18 reducing acquisition management costs.

19 “(3) PROGRAM PHASES.—For each defense ac-
20 quisition program participating in the pilot program,
21 incorporate in an approved acquisition strategy a
22 program review process that provides senior acquisi-
23 tion officials with reports that—

24 “(A) contain essential information on pro-
25 gram results at quarterly intervals;

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1 “(B) reduce data requirements from the
2 current major program review reporting re-
3 quirements; and

4 “(C) include data on program costs esti-
5 mates, actual expenditures, performance esti-
6 mates, performance data from tests, and, con-
7 sistent with existing statutes, the minimum nec-
8 essary other data items required to ensure the
9 appropriate expenditure of funds appropriated
10 for that program.

11 “(4) PROGRAM WORK FORCE POLICIES.—With
12 regard to the review of incentives and personnel ac-
13 tions required under section 836 of this Act—

14 “(A) not later than 60 days after the date
15 of the enactment of the Federal Acquisition
16 Streamlining Act of 1994—

17 “(i) complete the review; and

18 “(ii) on the basis of the review, define
19 one or more systems that relate incentives,
20 including pay, to achievement of budgets,
21 schedules, and performance requirements;

22 “(B) not later than 120 days after the
23 date of the enactment of the Federal Acquisi-
24 tion Streamlining Act of 1994—

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1 “(i) apply such a system of incentives
2 to not less than one defense acquisition
3 program participating in the pilot pro-
4 gram; and

5 “(ii) provide for an assessment of the
6 effectiveness of that system; and

7 “(C) incorporate the results of actions
8 taken pursuant to this paragraph into the de-
9 velopment of regulations for the implementation
10 of section 5001(b) of the Federal Acquisition
11 Streamlining Act of 1994.

12 “(5) EFFICIENT CONTRACTING PROCESS.—
13 Take any additional actions that the Secretary con-
14 siders necessary to waive regulations, not required
15 by statute, that affect the efficiency of the contract-
16 ing process, including, in the Secretary's discretion,
17 defining alternative techniques to reduce reliance on
18 military specifications and standards in contracts for
19 the defense acquisition programs participating in the
20 pilot program.

21 “(6) CONTRACT ADMINISTRATION: PERFORM-
22 ANCE BASED CONTRACT MANAGEMENT.—For at
23 least one participating defense acquisition program
24 for which a determination is made to make pay-
25 ments for work in progress under the authority of

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1 section 2307 of title 10, United States Code, define
2 payment milestones on the basis of quantitative
3 measures of results.

4 "(7) CONTRACTOR PERFORMANCE ASSESS-
5 MENT.—Collect and evaluate performance informa-
6 tion on each contract entered into for a defense ac-
7 quisition program participating in the pilot program,
8 including information on cost, schedule, and tech-
9 nical performance for each contractor supporting a
10 participating program.

11 "(d) APPLICABILITY.—(1) Subsection (b) applies
12 with respect to—

13 "(A) a contract that is awarded or modified
14 during the period described in paragraph (2); and

15 "(B) a contract that is awarded before the be-
16 ginning of such period and is to be performed (or
17 may be performed), in whole or in part, during such
18 period.

19 "(2) The period referred to in paragraph (1) is the
20 period that begins 45 days after the date of the enactment
21 of the Federal Acquisition Streamlining Act of 1994 and
22 ends on September 30, 1998."

23 (b) RULE OF CONSTRUCTION.—Nothing in section
24 840 of the National Defense Authorization Act for Fiscal
25 Year 1994, as added by subsection (a), shall be construed

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1 as authorizing the appropriation or obligation of funds for
 2 the programs designated for participation in the defense
 3 acquisition pilot program under the authority of sub-
 4 section (a) of such section 840.

5 **Subtitle B—Civilian Agency**
 6 **Acquisitions**

7 **SEC. 5051. PERFORMANCE BASED MANAGEMENT.**

8 (a) **POLICY AND GOALS FOR PERFORMANCE BASED**
 9 **MANAGEMENT OF PROGRAMS.—**

10 (1) **IN GENERAL.**—Title III of the Federal
 11 Property and Administrative Services Act of 1949
 12 (41 U.S.C. 301 et seq.), as amended by sections
 13 1552 and 1553, is further amended by adding at the
 14 end the following new section:

15 **“PERFORMANCE BASED MANAGEMENT: ACQUISITION**
 16 **PROGRAMS**

17 **“SEC. 311. (a) CONGRESSIONAL POLICY.**—It is the
 18 policy of Congress that the head of each executive agency
 19 should achieve, on average, 90 percent of the cost and
 20 schedule goals established for the research and develop-
 21 ment programs and acquisition programs of the agency
 22 without reducing the performance or capabilities of the
 23 items being acquired.

24 **“(b) ESTABLISHMENT OF GOALS.**—(1) The head of
 25 each executive agency shall approve or define the cost, per-

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1 formance, and schedule goals for major acquisition pro-
2 grams of the agency.

3 “(2) The chief financial officer of an executive agency
4 shall evaluate the cost goals proposed for each major de-
5 fense acquisition program of the agency.

6 “(c) IDENTIFICATION OF NONCOMPLIANT PRO-
7 GRAMS.—Whenever it is necessary to do so in order to
8 implement the policy set out in subsection (a), the head
9 of an executive agency shall—

10 “(1) identify and consider whether there is a
11 continuing need for programs that are significantly
12 behind schedule, over budget, or not in compliance
13 with performance or capability requirements taking
14 into consideration—

15 “(A) the needs of the agency known as of
16 the time of consideration;

17 “(B) the state of the technology or tech-
18 nologies relevant to the programs and to the
19 needs of the agency;

20 “(C) the estimated costs and projected
21 schedules necessary for the completion of such
22 programs; and

23 “(D) other pertinent information; and

24 “(2) identify existing and potential research
25 and development programs and acquisition programs

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1 that are suitable alternatives for programs consid-
 2 ered pursuant to paragraph (1)."

3 (2) CLERICAL AMENDMENT.—The table of con-
 4 tents in the first section of such Act, as amended by
 5 sections 1552 and 1553, is further amended by in-
 6 serting after the item relating to section 310 the fol-
 7 lowing new item:

"Sec. 311. Performance based management: acquisition programs."

8 (b) ANNUAL REPORTING REQUIREMENT.—Section 6
 9 of the Office of Federal Procurement Policy Act (41
 10 U.S.C. 405), as amended by section 1091, is further
 11 amended by adding at the end the following new sub-
 12 section:

13 "(k) The Administrator shall submit to Congress, on
 14 an annual basis, an assessment of the progress made in
 15 executive agencies in implementing the policy stated in
 16 section 311(a) of the Federal Property and Administrative
 17 Services Act of 1949. The Administrator shall use data
 18 from existing management systems in making the assess-
 19 ment."

20 (c) ENHANCED SYSTEM OF PERFORMANCE INCEN-
 21 TIVES.—Within one year after the date of the enactment
 22 of this Act, the Administrator for Federal Procurement
 23 Policy, in consultation with appropriate officials in other
 24 departments and agencies of the Federal Government,

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1 shall, to the maximum extent consistent with applicable
2 law—

3 (1) establish policies and procedures for the
4 heads of such departments and agencies to designate
5 acquisition positions and manage employees (includ-
6 ing the accession, education, training and career de-
7 velopment of employees) in the designated acquisi-
8 tion positions;

9 (2) extend to the acquisition workforce of the
10 entire executive branch the acquisition workforce
11 policies contained in chapter 87 of title 10, United
12 States Code, relating to the acquisition workforce of
13 the Department of Defense; and

14 (3) review the incentives and personnel actions
15 available to the heads of department and agencies of
16 the Federal Government for encouraging excellence
17 in the acquisition workforce of the Federal Govern-
18 ment and provide an enhanced system of incentives
19 for the encouragement of excellence in such
20 workforce which—

21 (A) relates pay to performance (including
22 the extent to which the performance of person-
23 nel in such workforce contributes to achieving
24 the cost goals, schedule goals, and performance
25 goals established for acquisition programs pur-

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1 suant to section 311(b) of the Federal Property
2 and Administrative Services Act of 1949, as
3 added by subsection (a)); and

4 (B) provides for consideration, in personnel
5 evaluations and promotion decisions, of the ex-
6 tent to which the performance of personnel in
7 such workforce contributes to achieving such
8 cost goals, schedule goals, and performance
9 goals.

10 (d) RECOMMENDED LEGISLATION.—Not later than
11 one year after the date of the enactment of this Act, the
12 Administrator for Federal Procurement Policy shall sub-
13 mit to Congress any recommended legislation that the Sec-
14 retary considers necessary to carry out section 311 of the
15 Federal Property and Administrative Services Act of
16 1949, as added by subsection (a), and otherwise to facili-
17 tate and enhance management of Federal Government ac-
18 quisition programs and the acquisition workforce of the
19 Federal Government on the basis of performance.

20 **SEC. 5052. RESULTS-ORIENTED ACQUISITION PROCESS.**

21 (a) DEVELOPMENT OF PROCESS REQUIRED.—The
22 Administrator for Federal Procurement Policy, in con-
23 sultation with the heads of appropriate Federal agencies,
24 shall develop a results-oriented acquisition process for im-
25 plementation by agencies in acquisitions of property and

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1 services by the Federal agencies. The process shall include
 2 the identification of quantitative measures and standards
 3 for determining the extent to which an acquisition of non-
 4 commercial items by a Federal agency satisfies the needs
 5 for which the items are being acquired.

6 (b) INAPPLICABILITY OF PROCESS TO DEPARTMENT
 7 OF DEFENSE.—The process developed pursuant to sub-
 8 section (a) may not be applied to the Department of De-
 9 fense.

10 Subtitle C—Miscellaneous

11 SEC. 5091. CONTRACTOR EXCEPTIONAL PERFORMANCE 12 AWARDS.

13 The Office of Federal Procurement Policy Act, as
 14 amended by section 4021, is further amended by adding
 15 at the end the following:

16 "CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS

17 "SEC. 31. (a) ESTABLISHMENT.—There is hereby es-
 18 tablished an executive branch program to recognize and
 19 promote exceptional contract performance by Federal Gov-
 20 ernment contractors.

21 "(b) SELECTION.—(1) The Administrator shall en-
 22 sure the establishment of criteria for selection of contrac-
 23 tors to receive exceptional performance awards under the
 24 program.

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1 “(2) The head of an executive agency may select one
2 or more agency contractors to receive an exceptional per-
3 formance award under the program.

4 “(c) AWARD CEREMONY.—The Vice President, or the
5 head of the executive agency selecting a contractor for an
6 exceptional performance award, shall present the award
7 to the contractor with such ceremony as the Vice Presi-
8 dent or head of the agency, as the case may be, considers
9 appropriate.”.

10 SEC. 5092. DEPARTMENT OF DEFENSE ACQUISITION OF IN-
11 TELLECTUAL PROPERTY RIGHTS.

12 Section 2386 of title 10, United States Code, is
13 amended by striking out paragraphs (3) and (4) and in-
14 serting in lieu thereof the following:

15 “(3) Technical data and computer software.

16 “(4) Releases for past infringement of patents
17 or copyrights or for unauthorized use of technical
18 data or computer software.”.

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1 **TITLE VI—STANDARDS OF**
 2 **CONDUCT**
 3 **Subtitle A—Ethics Provisions**

4 **SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PRO-**
 5 **UREMENT POLICY ACT.**

6 (a) **RECUSAL.**—Subsection (c) of section 27 of the
 7 Office of Procurement Policy Act (41 U.S.C. 423) is
 8 amended—

9 (1) in paragraph (1)—

10 (A) in the matter above subparagraph (A),
 11 by inserting “only” after “subsection (b)(1)”;
 12 and

13 (B) in subparagraph (A), by inserting
 14 “(including the modification or extension of a
 15 contract)” after “any procurement”;

16 (2) by striking out paragraphs (2) and (3) and
 17 inserting in lieu thereof:

18 “(2) Whenever the head of a procuring activity ap-
 19 proves a recusal under paragraph (1), a copy of the
 20 recusal request and the approval of the request shall be
 21 retained by such official for a period (not less than five
 22 years) specified in regulations prescribed in accordance
 23 with subsection (c).

24 “(3)(A) Except as provided in subparagraph (B), all
 25 recusal requests and approvals of recusal requests pursu-

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1 ant to this subsection shall be made available to the public
2 on request.

3 “(B) Any part of a recusal request or an approval
4 of a recusal request that is exempt from the disclosure
5 requirements of section 552 of title 5, United States Code,
6 under subsection (b)(1) of such section may be withheld
7 from disclosure to the public otherwise required under
8 subparagraph (A).”; and

9 (3) in paragraph (4), by striking out “compet-
10 ing contractor” and inserting in lieu thereof “per-
11 son”.

12 (b) APPLICABILITY OF CERTIFICATION REQUIRE-
13 MENT.—Subsection (e)(7)(A) of such section is amended
14 by adding at the end the following: “However, paragraph
15 (1)(B) does not apply with respect to a contract for less
16 than \$500,000.”.

17 (c) RESTRICTIONS RESULTING FROM PROCUREMENT
18 ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection
19 (f) of such section is amended—

20 (1) by redesignating paragraph (3) as para-
21 graph (4); and

22 (2) by striking out paragraphs (1) and (2) and
23 inserting in lieu thereof the following:

24 “(1) No individual who, in the year prior to separa-
25 tion from service as an officer or employee of the Govern-

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1 ment or an officer of the uniformed services in a covered
2 position, participated personally and substantially in ac-
3 quisition functions related to a contract, subcontract, or
4 claim of \$500,000 or more and—

5 “(A) engaged in repeated direct contact with
6 the contractor or subcontractor on matters relating
7 to such contract, subcontract, or claim; or

8 “(B) exercised significant ongoing decisionmak-
9 ing responsibility with respect to the contractor or
10 subcontractor on matters relating to such contract,
11 subcontract, or claim,

12 shall knowingly accept or continue employment with such
13 contractor or subcontractor for a period of 1 year follow-
14 ing the individual's separation from service, except that
15 such individual may accept or continue employment with
16 any division or affiliate of such contractor or subcontrac-
17 tor that does not produce the same or similar products
18 as the entity involved in the negotiation or performance
19 of the contract or subcontract or the adjustment of the
20 claim.

21 “(2) No contractor or subcontractor, or any officer,
22 employee, agent, or consultant of such contractor or sub-
23 contractor shall knowingly offer, provide, or continue any
24 employment for another person, if such contractor, sub-
25 contractor, officer, employee, agent, or consultant knows

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1 or should know that the acceptance of such employment
2 is or would be in violation of paragraph (1).

3 “(3) The head of each Federal agency shall designate
4 in writing as a ‘covered position’ under this section each
5 of the following positions in that agency:

6 “(A) The position of source selection authority,
7 member of a source selection evaluation board, or
8 chief of a financial or technical evaluation team, or
9 any other position, if the officer or employee in that
10 position is likely personally to exercise substantial
11 responsibility for ongoing discretionary functions in
12 the evaluation of proposals or the selection of a
13 source for a contract in excess of \$500,000.

14 “(B) The position of procuring contracting offi-
15 cer, or any other position, if the officer or employee
16 in that position is likely personally to exercise sub-
17 stantial responsibility for ongoing discretionary func-
18 tions in the negotiation of a contract in excess of
19 \$500,000 or the negotiation or settlement of a claim
20 in excess of \$500,000.

21 “(C) The position of program executive officer,
22 program manager, or deputy program manager, or
23 any other position, if the officer or employee in that
24 position is likely personally to exercise similar sub-
25 stantial responsibility for ongoing discretionary func-

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1 tions in the management or administration of a con-
 2 tract in excess of \$500,000.

3 "(D) The position of administrative contracting
 4 officer, the position of an officer or employee as-
 5 signed on a permanent basis to a Government Plant
 6 Representative's Office, the position of auditor, a
 7 quality assurance position, or any other position, if
 8 the officer or employee in that position is likely per-
 9 sonally to exercise substantial responsibility for on-
 10 going discretionary functions in the on-site oversight
 11 of a contractor's operations with respect to a con-
 12 tract in excess of \$500,000.

13 "(E) A position in which the incumbent is likely
 14 personally to exercise substantial responsibility for
 15 ongoing discretionary functions in operational or de-
 16 velopmental testing activities involving repeated di-
 17 rect contact with a contractor regarding a contract
 18 in excess of \$500,000."

19 (d) DISCLOSURE OF PROPRIETARY OR SOURCE SE-
 20 LECTION INFORMATION TO UNAUTHORIZED PERSONS.—
 21 Subsection (l) of such section is amended—

22 (1) by inserting "who are likely to be involved
 23 in contracts, modifications, or extensions in excess of
 24 \$25,000" in the first sentence after "its procure-
 25 ment officials"; and

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1 (2) by striking out "(e)" each place it appears
2 and inserting in each such place "(f)".

3 (e) RULES OF CONSTRUCTION.—Subsection (n) of
4 such section is amended to read as follows:

5 “(n) RULES OF CONSTRUCTION.—Nothing in this
6 section shall be construed to—

7 “(1) authorize the withholding of any informa-
8 tion from the Congress, any committee or sub-
9 committee thereof, a Federal agency, any board of
10 contract appeals of a Federal agency, the Comptrol-
11 ler General, or an inspector general of a Federal
12 agency;

13 “(2) restrict the disclosure of information to, or
14 receipt of information by, any person or class of per-
15 sons authorized, in accordance with applicable agen-
16 cy regulations or procedures, to receive that infor-
17 mation;

18 “(3) restrict a contractor from disclosing its
19 own proprietary information or the recipient of in-
20 formation so disclosed by a contractor from receiving
21 such information; or

22 “(4) restrict the disclosure or receipt of infor-
23 mation relating to a Federal agency procurement
24 that has been canceled by the agency and that the

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1 contracting officer concerned determines in writing
2 is not likely to be resumed.”.

3 (f) TERM TO BE DEFINED IN REGULATIONS.—Sub-
4 section (o)(2)(A) of such section is amended—

5 (1) by inserting “money, gratuity, or other” be-
6 fore “thing of value”; and

7 (2) by inserting before the semicolon “and such
8 other exceptions as may be adopted on a Govern-
9 mentwide basis under section 7353 of title 5, United
10 States Code”.

11 (g) TERMS DEFINED IN LAW.—Subsection (p) of
12 such section is amended—

13 (1) in paragraph (1) by striking out “clauses
14 (i)–(viii)” and inserting in lieu thereof “clauses (i)
15 through (vii)”;

16 (2) in paragraph (3)—

17 (A) in subparagraph (A)—

18 (i) by striking out clause (i);

19 (ii) by redesignating clauses (ii), (iii),
20 (iv), (v), (vi), (vii), and (viii) as clauses (i),
21 (ii), (iii), (iv), (v), (vi), and (vii), respec-
22 tively; and

23 (iii) in clause (i) (as redesignated by
24 subclause (II) of this clause), by striking
25 out “review and approval of a specifica-

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1 tion" and inserting in lieu thereof "ap-
2 proval or issuance of a specification, acqui-
3 sition plan, procurement request, or req-
4 uisition"; and

5 (B) in subparagraph (B), by striking out
6 all after "includes" and inserting in lieu thereof
7 the following: "any individual acting on behalf
8 of, or providing advice to, the agency with re-
9 spect to any phase of the agency procurement
10 concerned, regardless of whether such individ-
11 ual is a consultant, expert, or adviser, or an of-
12 ficer or employee of a contractor or subcontrac-
13 tor (other than a competing contractor)."; and

14 (3) in paragraph (6)(A), by inserting
15 "nonpublic" before "information".

16 SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES
17 CODE.

18 Section 208(a) of title 18, United States Code, is
19 amended—

20 (1) by inserting "(1)" before "Except as per-
21 mitted"; and

22 (2) by adding at the end the following new
23 paragraph:

24 "(2) Whoever knowingly aids, abets, counsels, com-
25 mands, induces, or procures conduct prohibited by this

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1 section shall be subject to the penalties set forth in section
2 216 of this title.”.

3 **SEC. 6002. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

4 (a) **REPEAL.**—The following provisions of law are re-
5 pealed:

6 (1) Sections 2207, 2397, 2397a, 2397b, 2397c,
7 and 2408 of title 10, United States Code.

8 (2) Section 281 of title 18, United States Code.

9 (3) Section 801 of title 37, United States Code.

10 (4) Part A of title VI of the Department of En-
11 ergy Organization Act (42 U.S.C. 7211 through
12 7218).

13 (b) **CLERICAL AMENDMENTS.**—

14 (1) **TITLE 10.**—Part IV of subtitle A of title 10,
15 United States Code, is amended—

16 (A) in the table of sections at the begin-
17 ning of chapter 131, by striking out the item
18 relating to section 2207; and

19 (B) in the table of sections for chapter
20 141, by striking out the items relating to sec-
21 tions 2397, 2397a, 2397b, 2397c, and 2408.

22 (2) **TITLE 18.**—The table of sections for chap-
23 ter 15 of title 18, United States Code, is amended
24 by striking out the item relating to section 281.

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1 (3) TITLE 37.—The table of sections for chap-
2 ter 15 of title 37, United States Code, is amended
3 by striking out the item relating to section 801.

4 (4) DEPARTMENT OF ENERGY ORGANIZATION
5 ACT.—The table of contents for the Department of
6 Energy Organization Act is amended by striking out
7 the matter relating to part A of title VI.

8 SEC. 6004. IMPLEMENTATION.

9 (a) REGULATIONS.—Not later than 180 days after
10 the date of the enactment of this Act, regulations imple-
11 menting the amendments made by section 6001 to section
12 27 of the Office of Federal Procurement Policy Act (41
13 U.S.C. 423), including definitions of the terms used in
14 subsection (f) of such section, shall be issued in accord-
15 ance with sections 6 and 25 of such Act (41 U.S.C. 405
16 and 521) after coordination with the Director of the Office
17 of Government Ethics.

18 (b) SAVINGS PROVISIONS.—

19 (1) CONTRACTOR CERTIFICATIONS.—No officer,
20 employee, agent, representative, or consultant of a
21 contractor who has signed a certification under sec-
22 tion 27(e)(1)(B) of the Office of Federal Procure-
23 ment Policy Act (41 U.S.C. 423(e)(1)(B)) before the
24 effective date of this Act shall be required to sign a

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1 new certification as a result of the enactment of this
2 Act.

3 (2) **FEDERAL PROCUREMENT OFFICIAL CER-**
4 **TIFICATIONS.**—No procurement official of a Federal
5 agency who has signed a certification under section
6 27(l) of the Office of Federal Procurement Policy
7 Act (41 U.S.C. 423(l)) before the date of enactment
8 of this Act shall be required to sign a new certifi-
9 cation as a result of the enactment of this Act.

10 (c) **INSPECTOR GENERAL REPORTS.**—Not later than
11 May 31 of each of the years 1995 through 1998, the In-
12 spector General of each Federal agency (or, in the case
13 of a Federal agency that does not have an Inspector Gen-
14 eral, the head of such agency) shall submit to Congress
15 a report on the compliance by the agency during the pre-
16 ceding year with the requirement for the head of the agen-
17 cy to designate covered procurement positions under sec-
18 tion 27(f)(3) of the Office of Federal Procurement Policy
19 Act (as added by section 6001(c)).

20 **Subtitle B—Additional** 21 **Amendments**

22 **SEC. 6061. CONTRACTING FUNCTIONS PERFORMED BY FED-** 23 **ERAL PERSONNEL.**

24 (a) **AMENDMENT OF OFPP ACT.**—The Office of Fed-
25 eral Procurement Policy Act, as amended by section 1092,

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1 is further amended by inserting after section 22 the fol-
2 lowing new section 23:

3 "CONTRACTING FUNCTIONS PERFORMED BY FEDERAL
4 PERSONNEL

5 "SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVI-
6 SORY AND ASSISTANCE SERVICES.—(1) No person who is
7 not an employee may be paid by an agency for services
8 to conduct evaluations or analyses of any aspect of a pro-
9 posal submitted for an acquisition unless employees with
10 adequate training and capabilities to perform such evalua-
11 tions and analyses are not readily available within the
12 agency or another Federal agency, as determined in ac-
13 cordance with standards and procedures prescribed in the
14 Federal Acquisition Regulation.

15 "(2) In the administration of this subsection, the
16 head of each agency shall determine in accordance with
17 the standards and procedures set forth in the Federal Ac-
18 quisition Regulation whether—

19 "(A) a sufficient number of employees within
20 the agency or another Federal agency are readily
21 available to perform a particular evaluation or analy-
22 sis for the agency head making the determination;
23 and

24 "(B) the readily available employees have the
25 training and capabilities necessary to perform the
26 evaluation or analysis.

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1 “(b) DEFINITION.—For purposes of this section, the
2 term ‘employee’ has the meaning given such term in sec-
3 tion 2105 of title 5, United States Code.”.

4 (b) REQUIREMENT FOR GUIDANCE AND REGULA-
5 TIONS.—

6 (1) GUIDANCE AND REGULATIONS REQUIRED.—

7 Not later than 90 days after the date of the enact-
8 ment of this Act, the Federal Acquisition Regulatory
9 Council established by section 25(a) of the Office of
10 Federal Procurement Policy Act (41 U.S.C. 421(a))
11 shall—

12 (A) review part 37 of title 48 of the Code
13 of Federal Regulations as it relates to the use
14 of advisory and assistance services; and

15 (B) provide guidance and promulgate regu-
16 lations regarding—

17 (i) what actions Federal agencies are
18 required to take to determine whether ex-
19 pertise is readily available within the Fed-
20 eral Government before contracting for ad-
21 visory and technical services to conduct ac-
22 quisitions; and

23 (ii) the manner in which Federal em-
24 ployees with expertise may be shared with

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1 agencies needing expertise for such acqui-
 2 tions.

3 (2) DEFINITION.—In paragraph (1), the term
 4 “employee” has the meaning given such term in sec-
 5 tion 2105 of title 5, United States Code.

6 **SEC. 6062. REPEAL OF EXECUTED REQUIREMENT FOR**
 7 **STUDY AND REPORT.**

8 Section 17 of the Office of Federal Procurement Pol-
 9 icy Act (41 U.S.C. 415) is repealed.

10 **SEC. 6063. INTERESTS OF MEMBERS OF CONGRESS.**

11 Section 3741 of the Revised Statutes (41 U.S.C. 22)
 12 is amended to read as follows:

13 “No member of Congress shall be admitted to any
 14 share or part of any contract or agreement made, entered
 15 into, or accepted by or on behalf of the United States,
 16 or to any benefit to arise thereupon.”

17 **SEC. 6064. WAITING PERIOD FOR SIGNIFICANT CHANGES**
 18 **PROPOSED FOR ACQUISITION REGULATIONS.**

19 Section 22(a) of the Office of Federal Procurement
 20 Policy Act (41 U.S.C. 418b) is amended—

21 (1) by striking out “30 days” and inserting in
 22 lieu thereof “60 days”; and

23 (2) by adding at the end the following: “Not-
 24 withstanding the preceding sentence, such a policy,
 25 regulation, procedure, or form may take effect ear-

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1 lier than 60 days after the publication date when
 2 there are compelling circumstances for the earlier
 3 effective date, but in no event may that effective
 4 date be less than 30 days after the publication
 5 date.”.

6 **Subtitle C—Whistleblower** 7 **Protection**

8 **SEC. 6101. ARMED SERVICES PROCUREMENTS.**

9 (a) **WHISTLEBLOWER PROTECTIONS FOR CONTRAC-**
 10 **TOR EMPLOYEES.**—Section 2409 of title 10, United
 11 States Code, is amended—

12 (1) by striking out subsection (d);

13 (2) by redesignating subsection (c) as sub-
 14 section (d); and

15 (3) by inserting after subsection (b) the follow-
 16 ing new subsection (c):

17 “(c) **REMEDY AND ENFORCEMENT AUTHORITY.**—(1)

18 If the Secretary of Defense determines that a defense con-
 19 tractor has subjected a person to a reprisal prohibited by
 20 subsection (a), the Secretary may take one or more of the
 21 following actions:

22 “(A) Order the defense contractor to take af-
 23 firmative action to abate the reprisal.

24 “(B) Order the defense contractor to reinstate
 25 the person to the position that the person held be-

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1 fore the reprisal, together with the compensation (in-
2 cluding back pay), employment benefits, and other
3 terms and conditions of employment that would
4 apply to the person in that position if the reprisal
5 had not been taken.

6 "(C) Order the defense contractor to pay the
7 complainant an amount equal to the aggregate
8 amount of all costs and expenses (including attor-
9 ney's fees and expert witnesses' fees) that were rea-
10 sonably incurred by the complainant for, or in con-
11 nection with, bringing the complaint regarding the
12 reprisal, as determined by the Secretary.

13 "(2) Whenever a person fails to comply with an order
14 issued under paragraph (1), the Secretary shall file an ac-
15 tion for enforcement of such order in the United States
16 district court for a district in which the reprisal was found
17 to have occurred. In any action brought under this para-
18 graph, the court may grant appropriate relief, including
19 injunctive relief and compensatory and exemplary dam-
20 ages.

21 "(3) Any person adversely affected or aggrieved by
22 an order issued under paragraph (1) may obtain review
23 of the order's conformance with this subsection, and any
24 regulations issued to carry out this section, in the United
25 States court of appeals for a circuit in which the reprisal

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1 is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the Secretary's order. Review shall conform to chapter 7 of title 5."

5 (b) RELATED LAW.—

6 (1) REPEAL.—Section 2409a of title 10, United States Code, is repealed.

8 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2409a.

12 SEC. 6102. GOVERNMENTWIDE WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES.

14 The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 5091, is further amended by adding at the end the following new section:

18 "CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION

20 "SEC. 32. (a) PROHIBITION OF REPRISALS.—An employee of an executive agency contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of the agency or the Department of Justice information relating to a substantial violation of

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1 law related to an agency contract (including the competi-
2 tion for or negotiation of an agency contract).

3 “(b) INVESTIGATION OF COMPLAINTS.—A person
4 who believes that the person has been subjected to a re-
5 prisal prohibited by subsection (a) may submit a complaint
6 to the Inspector General of the executive agency. Unless
7 the Inspector General determines that the complaint is
8 frivolous, the Inspector General shall investigate the com-
9 plaint and, upon completion of such investigation, submit
10 a report of the findings of the investigation to the person,
11 the contractor concerned, and the head of the agency. In
12 the case of an executive agency that does not have an in-
13 spector general, the duties of the inspector general under
14 this section shall be performed by an official designated
15 by the agency head.

16 “(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1)
17 If the head of an executive agency determines that an
18 agency contractor has subjected a person to a reprisal pro-
19 hibited by subsection (a), the agency head may take one
20 or more of the following actions:

21 “(A) Order the contractor to take affirmative
22 action to abate the reprisal.

23 “(B) Order the contractor to reinstate the per-
24 son to the position that the person held before the
25 reprisal, together with the compensation (including

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1 back pay), employment benefits, and other terms
2 and conditions of employment that would apply to
3 the person in that position if the reprisal had not
4 been taken.

5 “(C) Order the contractor to pay the complain-
6 ant an amount equal to the aggregate amount of all
7 costs and expenses (including attorney’s fees and ex-
8 pert witnesses’ fees) that were reasonably incurred
9 by the complainant for, or in connection with, bring-
10 ing the complaint regarding the reprisal, as deter-
11 mined by the Secretary.

12 “(2) Whenever a person fails to comply with an order
13 issued under paragraph (1), the agency head shall file an
14 action for enforcement of such order in the United States
15 district court for a district in which the reprisal was found
16 to have occurred. In any action brought under this para-
17 graph, the court may grant appropriate relief, including
18 injunctive relief and compensatory and exemplary dam-
19 ages.

20 “(3) Any person adversely affected or aggrieved by
21 an order issued under paragraph (1) may obtain review
22 of the order’s conformance with this subsection, and any
23 regulations issued to carry out this section, in the United
24 States court of appeals for a circuit in which the reprisal
25 is alleged in the order to have occurred. No petition seek-

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1 ing such review may be filed more than 60 days after issu-
2 ance of the agency head's order. Review shall conform to
3 chapter 7 of title 5, United States Code.

4 “(d) CONSTRUCTION.—Nothing in this section may
5 be construed to authorize the discharge of, demotion of,
6 or discrimination against an employee for a disclosure
7 other than a disclosure protected by subsection (a) or to
8 modify or derogate from a right or remedy otherwise avail-
9 able to the employee.

10 “(e) COORDINATION WITH OTHER LAW.—This sec-
11 tion does not apply with respect to the Department of De-
12 fense. For the corresponding provision of law applicable
13 to the Department of Defense, see section 2409 of title
14 10, United States Code.

15 “(f) DEFINITION.—In this section, the term ‘Inspec-
16 tor General’ means an Inspector General appointed under
17 the Inspector General Act of 1978.”.

1 **TITLE VII—DEFENSE TRADE AND** 2 **COOPERATION**

3 **SEC. 7001. PURCHASES OF FOREIGN GOODS.**

4 **(a) REPEAL OF EXECUTED REQUIREMENTS.—**

5 **(1) REQUIREMENT FOR POLICY GUIDANCE.—**

6 Title III of the Act of March 3, 1933 (41 U.S.C.
7 10a et seq.), commonly referred to as the "Buy
8 American Act", is amended in section 4(g) (41
9 U.S.C. 10b-1(g)) by striking out paragraphs (2)(C)
10 and (3).

11 **(2) REPORTING REQUIREMENT.—**Section
12 9096(b) of Public Law 102-396 (106 Stat. 1924; 41
13 U.S.C. 10b-2(b)) is repealed.

14 **(b) REPEAL OF REDUNDANT PROVISION.—**

15 **(1) CONSIDERATION OF NATIONAL SECURITY**
16 **OBJECTIVES.—**Section 2327 of title 10, United
17 States Code, is repealed.

18 **(2) CLERICAL AMENDMENT.—**The table of sec-
19 tions at the beginning of chapter 137 of such title
20 is amended by striking out the item relating to sec-
21 tion 2327.

22 **SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.**

23 **(a) TERMINOLOGY REVISIONS.—**Section 2531 of title
24 10, United States Code, is amended—

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1 (1) in the subsection captions for subsections
 2 (a) and (c), by striking out "MOUS AND RELATED"
 3 and inserting in lieu thereof "INTERNATIONAL";

4 (2) in subsection (a), by striking out "proposed
 5 memorandum of understanding, or any existing or
 6 proposed agreement related to a memorandum of
 7 understanding," in the matter above paragraph (1)
 8 and inserting in lieu thereof "proposed international
 9 agreement, including a memorandum of understand-
 10 ing,";

11 (3) by striking out "memorandum of under-
 12 standing or related agreement" each place it appears
 13 and inserting in lieu thereof "international agree-
 14 ment";

15 (4) in subsection (b), by striking out "memo-
 16 randum or related agreement" each place it appears
 17 in the second sentence and inserting in lieu thereof
 18 "international agreement"; and

19 (5) in subsection (c)—

20 (A) by striking out "A" after "AGREE-
 21 MENTS.—" and inserting in lieu thereof "An";
 22 and

23 (B) by striking out "memorandum or
 24 agreement" and inserting in lieu thereof "inter-
 25 national agreement".

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1 (b) EXPANDED SCOPE OF AGREEMENTS.—Section
 2 2531(a) of title 10, United States Code, is amended by
 3 striking out “research, development, or production” in the
 4 matter above paragraph (1) and inserting in lieu thereof
 5 “research, development, production, or logistics support”.

6 (c) CLERICAL AMENDMENTS.—

7 (1) SECTION HEADING.—The heading of section
 8 2531 of title 10, United States Code, is amended to
 9 read as follows:

10 “§ 2531. Defense international agreements”.

11 (2) TABLE OF SECTIONS.—The item relating to
 12 such section in the table of sections at the beginning
 13 of subchapter V of chapter 148 of such title is
 14 amended to read as follows:

“2531. Defense international agreements.”.

15 SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS,
 16 AND STANDARDIZATION.

17 (a) LIMITED WAIVER OF RESTRICTIONS ON AC-
 18 CRUED REIMBURSABLE LIABILITIES AND CREDITS FOR
 19 CONTINGENCY OPERATIONS.—Section 2347 of title 10,
 20 United States Code, is amended by adding at the end the
 21 following new subsection:

22 “(c) The Secretary of Defense may waive the restric-
 23 tions in subsections (a) and (b) for a period not to exceed
 24 180 days upon a written determination that the armed
 25 forces are involved in a contingency operation or that in-

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1 involvement of the armed forces in a contingency operation
 2 is imminent. Upon making such a determination, the Sec-
 3 retary shall transmit a copy of the determination to the
 4 Committees on Armed Services of the Senate and House
 5 of Representatives.”.

6 (b) COMMUNICATIONS SUPPORT.—Section 2350f of
 7 title 10, United States Code, is amended—

8 (1) by redesignating subsection (d) as sub-
 9 section (e); and

10 (2) by inserting after subsection (c) the follow-
 11 ing new subsection:

12 “(d)(1) Nothing in this section shall be construed to
 13 limit the authority of the Secretary of Defense, without
 14 a formal bilateral agreement or multilateral arrangement,
 15 to furnish communications support and related supplies
 16 to, or receive communications support and related supplies
 17 from, an allied country in accordance with this subsection.

18 “(2) The Secretary of Defense may furnish or receive
 19 such support and supplies on a reciprocal basis for a pe-
 20 riod not to exceed 90 days—

21 “(A) in order to meet emerging operational re-
 22 quirements of the United States and the allied coun-
 23 try; or

24 “(B) incident to a joint military exercise with
 25 the allied country.

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1 “(3) If interconnection of communication circuits is
2 maintained for joint or multilateral defense purposes
3 under the authority of this subsection, the costs of main-
4 taining such circuits may be allocated among the various
5 users.”.

April 22, 1994 (9:48 a.m.)

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8-1

1 TITLE VIII—COMMERCIAL ITEMS

2 SEC. 8001. DEFINITIONS.

3 Section 4 of the Office of Federal Procurement Policy
4 Act (41 U.S.C. 403), as amended by section 4001(a), is
5 further amended—

6 (1) by striking out “Act—” and inserting in lieu
7 thereof “Act.”;

8 (2) by capitalizing the initial letter in the first
9 word of each paragraph;

10 (3) by striking out the semicolon at the end of
11 each of paragraphs (1), (2), (3), (5), (6), (7), (8),
12 and (9) and inserting in lieu thereof a period;

13 (4) in paragraphs (4) and (10), by striking out
14 “; and” at the end and inserting in lieu thereof a
15 period; and

16 (5) by adding at the end the following new
17 paragraphs:

18 “(12) The term ‘commercial item’ means—

19 “(A) property, other than real property,
20 that is of a type customarily used by the gen-
21 eral public or by nongovernmental entities in
22 the course of normal business operations for
23 purposes other than governmental purposes
24 and—

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8-2

1 “(i) has been sold, leased, or licensed
2 to the general public;

3 “(ii) has not been sold, leased, or li-
4 censed to the general public but has been
5 offered for sale, lease, or license to the
6 general public; or

7 “(iii) is not yet available in the com-
8 mercial marketplace but will be made
9 available for commercial delivery within a
10 reasonable period;

11 “(B) any item that, but for—

12 “(i) modifications of a type customar-
13 ily available in the commercial market-
14 place, or

15 “(ii) minor modifications made to
16 meet Federal Government requirements,
17 would satisfy the criteria in subparagraph (A);

18 “(C) any combination of items meeting the
19 requirements of subparagraph (A), (B), or (D)
20 that are of a type customarily combined and
21 sold in combination to the general public;

22 “(D) installation services, maintenance
23 services, repair services, training services, and
24 other services if such services are procured for
25 support of an item referred to in subparagraph

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8-3

1 (A), (B), or (C) and if the source of such
2 services—

3 “(i) offers such services to the general
4 public and the Federal Government con-
5 temporaneously and under similar terms
6 and conditions; and

7 “(ii) offers to use the same work force
8 for providing the Federal Government with
9 such services as the source uses for provid-
10 ing such services to the general public; and

11 “(E) any item, combination of items, or
12 service referred to in subparagraph (A), (B),
13 (C), or (D), regardless of whether the item,
14 combination of items, or service is transferred
15 between or among separate divisions, subsidi-
16 aries, or affiliates of a contractor.

17 “(13) The term ‘nondevelopmental item’
18 means—

19 “(A) any commercial item;

20 “(B) any previously developed item of sup-
21 ply that is in use by a department or agency of
22 the United States, a State or local government,
23 or a foreign government with which the United
24 States has a mutual defense cooperation agree-
25 ment;

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8-4

1 “(C) any item of supply described in sub-
 2 paragraph (A) or (B) that requires only minor
 3 modification of the type normally available in
 4 the commercial marketplace in order to meet
 5 the requirements of the procuring department
 6 or agency; or

7 “(D) any item of supply currently being
 8 produced that does not meet the requirements
 9 of subparagraph (A), (B), or (C) solely because
 10 the item—

11 “(i) is not yet in use; or

12 “(ii) is not yet available in the com-
 13 mercial marketplace.

14 “(14) The term ‘component’ means any item
 15 supplied to the Federal Government as part of an
 16 end item or of another component.

17 “(15) The term ‘commercial component’ means
 18 any component that is a commercial item.”.

19 **SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMER-**
 20 **CIAL ITEMS AND NONDEVELOPMENTAL**
 21 **ITEMS.**

22 (a) **PREFERENCE REQUIRED.**—The Office of Federal
 23 Procurement Policy Act (41 U.S.C. 401 et seq.), as
 24 amended by section 6102, is further amended by adding
 25 at the end the following new section:

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8-5

1 "PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS
2 AND NONDEVELOPMENTAL ITEMS

3 "SEC. 33. (a) PREFERENCE.—The head of each exec-
4 utive agency shall ensure that, to the maximum extent
5 practicable—

6 "(1) requirements of the executive agency with
7 respect to a procurement of supplies are stated in
8 terms of—

9 "(A) functions to be performed;

10 "(B) performance required; or

11 "(C) essential physical characteristics;

12 "(2) such requirements are defined so that
13 commercial items or, to the extent that commercial
14 items suitable to meet the agency's needs are not
15 available, other nondevelopmental items may be pro-
16 cured to fulfill such requirements; and

17 "(3) offerors of commercial items and other
18 nondevelopmental items are provided an opportunity
19 to compete in any procurement to fill such require-
20 ments.

21 "(b) IMPLEMENTATION.—The head of each executive
22 agency shall ensure that procurement officials in that ex-
23 ecutive agency, to the maximum extent practicable—

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1 “(1) acquire commercial items or other
2 nondevelopmental items to meet the needs of the ex-
3 ecutive agency;

4 “(2) require prime contractors and subcontrac-
5 tors at all levels under the executive agency con-
6 tracts to incorporate commercial items or other
7 nondevelopmental items as components of items sup-
8 plied to the executive agency;

9 “(3) modify requirements in appropriate cases
10 to ensure that the requirements can be met by com-
11 mercial items or, to the extent that commercial
12 items suitable to meet the agency's needs are not
13 available, other nondevelopmental items;

14 “(4) state specifications in terms that enable
15 and encourage bidders and offerors to supply com-
16 mercial items or, to the extent that commercial
17 items suitable to meet the agency's needs are not
18 available, other nondevelopmental items in response
19 to the executive agency solicitations;

20 “(5) revise the executive agency's procurement
21 policies, practices, and procedures not required by
22 law to reduce any impediments in those policies,
23 practices, and procedures to the acquisition of com-
24 mercial items; and

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1 “(6) require training of appropriate personnel¹
2 in the acquisition of commercial items.

3 “(c) PRELIMINARY MARKET RESEARCH.—(1) The
4 head of an executive agency shall conduct market research
5 appropriate to the circumstances—

6 “(A) before developing new specifications for a
7 procurement by that executive agency; and

8 “(B) before soliciting bids or proposals for a
9 contract in excess of the simplified acquisition
10 threshold.

11 “(2) The head of an executive agency shall use the
12 results of market research to determine whether there are
13 commercial items or, to the extent that commercial items
14 suitable to meet the agency's needs are not available, other
15 nondevelopmental items available that—

16 “(A) meet the executive agency's requirements;

17 “(B) could be modified to meet the executive
18 agency's requirements; or

19 “(C) could meet the executive agency's require-
20 ments if those requirements were modified to a rea-
21 sonable extent.”.

22 (b) REPEAL OF SUPERSEDED PROVISION.—

23 (1) SEPARATE STATEMENT OF PREFERENCE
24 FOR DEPARTMENT OF DEFENSE.—Section 2325 of
25 title 10, United States Code, is repealed.

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1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of chapter 137 of such title
 3 is amended by striking out the item relating to sec-
 4 tion 2325.

5 **SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.**

6 (a) REQUIRED FAR PROVISIONS.—The Office of
 7 Federal Procurement Policy Act (41 U.S.C. 401 et seq.),
 8 as amended by section 8002, is further amended by adding
 9 at the end the following:

10 “FEDERAL ACQUISITION REGULATION PROVISIONS RE-
 11 GARDING ACQUISITIONS OF COMMERCIAL ITEMS AND
 12 COMPONENTS

13 “SEC. 34. (a) CONTRACT CLAUSES AND OTHER
 14 CLAUSES.—(1)(A) The Federal Acquisition Regulation
 15 shall include one or more sets of contract clauses contain-
 16 ing the required terms and conditions for the acquisition
 17 of commercial items and commercial components by execu-
 18 tive agencies and by contractors in the performance of
 19 contracts of executive agencies.

20 “(B) The contract clauses referred to in subpara-
 21 graph (A) shall include only—

22 “(i) those clauses that are required to imple-
 23 ment provisions of law applicable to acquisitions of
 24 commercial items or commercial components, as the
 25 case may be;

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1 “(ii) those contract clauses that are essential
2 for the protection of the Federal Government's inter-
3 est in an acquisition of commercial items or commer-
4 cial components, as the case may be; and

5 “(iii) those contract clauses that are determined
6 to be consistent with standard commercial practice.

7 “(2) Subject to paragraph (3), the Federal Acquisi-
8 tion Regulation shall require that, to the maximum extent
9 practicable, only the contract clauses referred to in para-
10 graph (1) be used in a contract, or be required to be used
11 in a subcontract, for the acquisition of commercial items
12 or commercial components by or for an executive agency.

13 “(3) The Federal Acquisition Regulation shall pro-
14 vide that a contract or subcontract referred to in para-
15 graph (2) may contain contract clauses other than the
16 contract clauses referred to in that paragraph only if the
17 other clauses are essential for the protection of the Fed-
18 eral Government's interest in—

19 “(A) that contract or subcontract, as deter-
20 mined in writing by the contracting officer for such
21 contract; or

22 “(B) a class of contracts or subcontracts, as de-
23 termined by the head of an agency concerned, unless
24 the determination of that head of an agency is dis-
25 approved by the Administrator.

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1 “(4) The Federal Acquisition Regulation shall pro-
2 vide standards and procedures for waiving the use of con-
3 tract clauses required pursuant to paragraph (1), other
4 than those required by law, including standards for deter-
5 mining the cases in which a waiver is appropriate.

6 “(b) MARKET ACCEPTANCE.—The Federal Acquisi-
7 tion Regulation shall provide that under appropriate con-
8 ditions the head of an executive agency may require
9 offerors to demonstrate that the items offered—

10 “(1) have either—

11 “(A) achieved commercial market accept-
12 ance; or

13 “(B) been satisfactorily supplied to an ex-
14 ecutive agency under current or recent con-
15 tracts for the same or similar requirements; and

16 “(2) otherwise meet the item description, speci-
17 fications, or other criteria prescribed in the public
18 notice and solicitation relating to the contract.

19 “(c) USE OF FIRM, FIXED PRICE CONTRACTS.—The
20 Federal Acquisition Regulation shall include a require-
21 ment that firm, fixed price contracts or fixed price with
22 economic price adjustment contracts, be used, to the maxi-
23 mum extent practicable, for the acquisition of commercial
24 items.

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1 “(d) CONTRACT QUALITY REQUIREMENTS.—The
2 Federal Acquisition Regulation shall include provisions
3 that—

4 “(1) permit, to the maximum extent prac-
5 ticable, a contractor under a commercial items ac-
6 quisition to use the contractor’s existing quality as-
7 surance system as a substitute for compliance with
8 a requirement for the Federal Government to inspect
9 or test the commercial items before the contractor’s
10 tender of those items for acceptance by the Federal
11 Government;

12 “(2) require that, to the maximum extent prac-
13 ticable, an executive agency accept commercial war-
14 ranties (including extended warranties) offered by
15 offerors of commercial items to commercial cus-
16 tomers and use such warranties for the repair and
17 replacement of commercial items; and

18 “(3) set forth guidance to executive agencies re-
19 garding the use of past performance of items and
20 sources as a factor in contract award decisions.”.

21 (b) DEFENSE CONTRACT CLAUSES.—

22 (1) TERMINATION OF DOD AUTHORITY.—Sec-
23 tion 824(b) of the National Defense Authorization
24 Act for Fiscal Years 1990 and 1991 (Public Law
25 101-189; 10 U.S.C. 2325 note) shall cease to be ef-

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1 fective on the date on which the regulations imple-
 2 menting section 34 of the Office of Federal Procure-
 3 ment Policy Act, as added by subsection (a), become
 4 effective.

5 (2) SAVINGS PROVISION.—Notwithstanding sec-
 6 tion 34(a) of the Office of Federal Procurement Pol-
 7 icy Act (as added by subsection (a)), contracts of the
 8 Department of Defense entered into before the date
 9 on which section 824(b) ceases to be effective under
 10 paragraph (1), and subcontracts entered into before
 11 such date under such contracts, may include clauses
 12 developed pursuant to paragraphs (2) and (3) of sec-
 13 tion 824(b) of the National Defense Authorization
 14 Act for Fiscal Years 1990 and 1991 (Public Law
 15 101-189; 10 U.S.C. 2325 note).

16 **SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN**
 17 **LAWS.**

18 The Office of Federal Procurement Policy Act (41
 19 U.S.C. 401 et seq.), as amended by section 8003, is fur-
 20 ther amended by adding at the end the following:

21 **"CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO**
 22 **ACQUISITIONS OF COMMERCIAL ITEMS**

23 **"SEC. 35. (a) IN GENERAL.—**The applicability of a
 24 provision of law described in subsection (c) that is enacted
 25 after the date of the enactment of the Federal Acquisition
 26 Streamlining Act of 1994 to contracts for the acquisition

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1 of commercial items may be waived on a class basis in
 2 the Federal Acquisition Regulation. Such a waiver shall
 3 not apply to a provision of law that expressly refers to
 4 this section and prohibits the waiver of that provision of
 5 law.

6 “(b) WAIVER OF APPLICABILITY TO SUB-
 7 CONTRACTS.—(1) The applicability of a provision of law
 8 described in subsection (c) to subcontracts under a con-
 9 tract for the acquisition of commercial items or a sub-
 10 contract for the acquisition of commercial components
 11 may be waived on a class basis in the Federal Acquisition
 12 Regulation. Such a waiver shall not apply to a provision
 13 of law that expressly refers to this section and prohibits
 14 the waiver of that provision of law.

15 “(2) Nothing in this subsection shall be construed to
 16 authorize the waiver of the applicability of any provision
 17 of law with respect to—

18 “(A) any contract with a prime contractor; or

19 “(B) any subcontract under a contract with a
 20 prime contractor who does not substantially trans-
 21 form the commercial items supplied under the con-
 22 tract.

23 “(c) COVERED LAW.—A provision of law referred to
 24 in subsections (a) and (b) is any provision of law that,
 25 as determined by the Federal Acquisition Regulatory

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1 Council, sets forth policies, procedures, requirements, or
 2 restrictions for the procurement of property or services by
 3 the Federal Government.”.

4 **SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
 5 **LAW.**

6 (a) **ARMED SERVICES ACQUISITIONS.—**

7 (1) **PROHIBITION ON CONTINGENT FEES.—**Sec-
 8 tion 2306(b) of title 10, United States Code, as
 9 amended by section 4022(a), is further amended by
 10 inserting before the period at the end of the sentence
 11 added by section 4022(a) the following: “or to a con-
 12 tract for the acquisition of commercial items”.

13 (2) **REQUIREMENT TO IDENTIFY SUPPLIERS**
 14 **AND SOURCES OF SUPPLIES.—**Paragraph (2) of sec-
 15 tion 2384(b) of title 10, United States Code, is
 16 amended to read as follows:

17 “(2) The regulations prescribed pursuant to para-
 18 graph (1) do not apply to a contract that requires the de-
 19 livery of supplies that are commercial items, as defined
 20 in section 2302 of this title.”.

21 (3) **PROHIBITION AGAINST DOING BUSINESS**
 22 **WITH CERTAIN OFFERORS OR CONTRACTORS.—**Sec-
 23 tion 2393(d) of title 10, United States Code, as
 24 amended by section 4022(e), is further amended by
 25 adding at the end the following: “The requirement

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1 shall not apply in the case of a subcontract for the
2 acquisition of commercial items (as defined in sec-
3 tion 4(12) of the Office of Federal Procurement Pol-
4 icy Act (41 U.S.C. 403(12))).”.

5 (4) PROHIBITION ON LIMITATION OF SUB-
6 CONTRACTOR DIRECT SALES.—Section 2402 of title
7 10, United States Code, as amended by section
8 4022(b), is further amended by adding at the end
9 the following new subsection:

10 “(d)(1) An agreement between the contractor in a
11 contract for the acquisition of commercial items and a
12 subcontractor under such contract that restricts sales by
13 such subcontractor directly to persons other than the con-
14 tractor may not be considered to unreasonably restrict
15 sales by that subcontractor to the United States in viola-
16 tion of the provision included in such contract pursuant
17 to subsection (a) if the agreement does not result in the
18 Federal Government being treated differently with regard
19 to the restriction than any other prospective purchaser of
20 such commercial items from that subcontractor.

21 “(2) In paragraph (1), the term ‘commercial item’
22 has the meaning given such term in section 4(12) of the
23 Office of Federal Procurement Policy Act (41 U.S.C.
24 403(12))).”.

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8-16

1 (5) CONTRACTOR INVENTORY ACCOUNTING SYS-
 2 TEMS: STANDARDS.—Section 2410b of title 10,
 3 United States Code, is amended—

4 (A) by inserting “(a) REGULATIONS RE-
 5 QUIRED.—” before “The Secretary of Defense”;
 6 and

7 (B) by adding at the end the following new
 8 subsection:

9 “(b) INAPPLICABILITY TO ACQUISITIONS OF COM-
 10 Mercial ITEMS.—The regulations prescribed pursuant to
 11 subsection (a) need not apply to a contract for the acqui-
 12 sition of commercial items (as defined in section 4(12) of
 13 the Office of Federal Procurement Policy Act (41 U.S.C.
 14 403(12))).”.

15 (6) PREFERENCE FOR USE OF UNITED STATES
 16 VESSELS FOR TRANSPORTING SUPPLIES OF THE
 17 ARMED FORCES.—Section 2631 of title 10, United
 18 States Code, as amended by section 4022(f), is fur-
 19 ther amended by inserting “a contract for commer-
 20 cial items (as defined in section 4(12) of such Act
 21 (41 U.S.C. 403(12))) or” before “a contract not in
 22 excess of the simplified acquisition threshold”.

23 (b) CIVILIAN AGENCY ACQUISITIONS.—

24 (1) RESTRICTIONS ON SUBCONTRACTOR SALES
 25 TO THE UNITED STATES.—Section 303G of the Fed-

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8-17

1 eral Property and Administrative Services Act of
2 1949 (41 U.S.C. 253g), as amended by section
3 4023(b), is further amended by adding at the end
4 the following new subsection:

5 “(d) An agreement between the contractor in a con-
6 tract for the acquisition of commercial items and a sub-
7 contractor under such contract that restricts sales by such
8 subcontractor directly to persons other than the contractor
9 may not be considered to unreasonably restrict sales by
10 that subcontractor to the United States in violation of the
11 provision included in such contract pursuant to subsection
12 (a) if the agreement does not result in the Federal Govern-
13 ment being treated differently with regard to the restric-
14 tion than any other prospective purchaser of such commer-
15 cial items from that subcontractor.”.

16 (2) PROHIBITION ON CONTINGENT FEES.—Sec-
17 tion 304(a) of the Federal Property and Administra-
18 tive Services Act of 1949 (41 U.S.C. 254(a)), as
19 amended by section 4023(a) is further amended by
20 inserting before the period at the end of the sentence
21 added by section 4041 the following: “or to a con-
22 tract for the acquisition of commercial items”.

23 (c) ACQUISITIONS GENERALLY.—

24 (1) FEDERAL WATER POLLUTION CONTROL
25 ACT.—Section 508 of the Federal Water Pollution

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8-18

1 Control Act (33 U.S.C. 1368) is amended by adding
 2 at the end the following new subsection:

3 “(f)(1) No certification by a contractor, and no con-
 4 tract clause, may be required in the case of a contract
 5 for the acquisition of commercial items in order to imple-
 6 ment a prohibition or requirement of this section or a pro-
 7 hibition or requirement issued in the implementation of
 8 this section.

9 “(2) In paragraph (1), the term ‘commercial item’
 10 has the meaning given such term in section 4(12) of the
 11 Office of Federal Procurement Policy Act (41 U.S.C.
 12 403(12)).”.

13 (2) CONTRACT WORK HOURS AND SAFETY
 14 STANDARDS ACT.—The Contract Work Hours and
 15 Safety Standards Act (title I of the Work Hours and
 16 Safety Act of 1962 (40 U.S.C. 327 et seq.)) is
 17 amended by adding at the end the following new sec-
 18 tion:

19 “SEC. 108. (a) No certification by a contractor, and
 20 no contract clause, may be required in the case of a con-
 21 tract for the acquisition of commercial items in order to
 22 implement a prohibition or requirement in this title.

23 “(b) In subsection (a), the term ‘commercial item’
 24 has the meaning given such term in section 4(12) of the

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1 Office of Federal Procurement Policy Act (41 U.S.C.
2 403(12)).”.

3 (3) OFFICE OF FEDERAL PROCUREMENT POL-
4 ICY ACT REQUIREMENT RELATING TO PROCUREMENT
5 INTEGRITY CERTIFICATIONS.—Section 27(e)(7) of
6 the Office of Federal Procurement Policy Act (41
7 U.S.C. 423) is amended by adding at the end the
8 following new subparagraph:

9 “(C) This subsection does not apply to a contract for
10 the acquisition of commercial items.”.

11 (4) CERTAIN PROVISIONS OF THE ANTI-KICK-
12 BACK ACT OF 1986.—

13 (A) REQUIREMENT FOR CONTRACT
14 CLAUSE.—Section 7 of the Anti-Kickback Act
15 of 1986 (41 U.S.C. 57), as amended by section
16 4024(b), is further amended by inserting before
17 the period at the end of subsection (d) the fol-
18 lowing: “or to a prime contract for the acqui-
19 sition of commercial items (as defined in section
20 4(12) of such Act (41 U.S.C. 403(12))).”.

21 (B) INSPECTION AUTHORITY.—Section 8
22 of such Act (41 U.S.C. 58) is amended by add-
23 ing at the end the following: “This section does
24 not apply with respect to a prime contract for
25 the acquisition of commercial items (as defined

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1 in section 4(12) of the Office of Federal Pro-
 2 curement Policy Act (41 U.S.C. 403(12))).”.

3 (5) DRUG-FREE WORKPLACE ACT OF 1988.—
 4 Section 5152(a)(1) of the Drug-Free Workplace Act
 5 of 1988 (subtitle D of title V of Public Law 100-
 6 690; 41 U.S.C. 701(a)(1)), as amended by section
 7 4024(e), is further amended by inserting after the
 8 matter inserted by such section 4024(e) the follow-
 9 ing: “, other than a contract for the procurement of
 10 commercial items (as defined in section 4(12) of
 11 such Act (41 U.S.C. 403(12))),”.

12 (6) CLEAN AIR ACT.—Section 306 of the Clean
 13 Air Act (42 U.S.C. 7606) is amended by adding at
 14 the end the following new subsection:

15 “(f)(1) No certification by a contractor, and no con-
 16 tract clause, may be required in the case of a contract
 17 for the acquisition of commercial items in order to imple-
 18 ment a prohibition or requirement of this section or a pro-
 19 hibition or requirement issued in the implementation of
 20 this section.

21 “(2) In paragraph (1), the term ‘commercial item’
 22 has the meaning given such term in section 4(12) of the
 23 Office of Federal Procurement Policy Act (41 U.S.C.
 24 403(12))).”.

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1 (7) **MERCHANT MARINE ACT, 1936.**—Paragraph
 2 (3) of section 901(b) of the Merchant Marine Act,
 3 1936 (46 U.S.C. 1241(b)), as added by section
 4 4024(f), is further amended by inserting “a contract
 5 for commercial items (as defined in section 4(12) of
 6 such Act (41 U.S.C. 403(12))) or” before “a contract
 7 not in excess of the simplified acquisition threshold”.

8 (8) **FLY AMERICAN REQUIREMENTS.**—Section
 9 1117 of the Federal Aviation Act of 1958 (49
 10 U.S.C. App. 1517) is amended by adding at the end
 11 the following new subsection:

12 “(e)(1) No certification by a contractor, and no con-
 13 tract clause, may be required in the case of a contract
 14 for the transportation of commercial items in order to im-
 15 plement a requirement in this section.

16 “(2) In paragraph (1), the term ‘commercial item’
 17 has the meaning given such term in section 4(12) of the
 18 Office of Federal Procurement Policy Act (41 U.S.C.
 19 403(12)).”.

20 **SEC. 8006. FLEXIBLE DEADLINES FOR SUBMISSION OF OF-**
 21 **FERS OF COMMERCIAL ITEMS.**

22 Section 18(a) of the Office of Federal Procurement
 23 Policy Act (41 U.S.C. 416(a)) is amended by adding at
 24 the end the following new paragraph:

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1 “(4) The requirements of paragraph (3)(B) do not
 2 apply to contracts for the purchase of commercial items.
 3 The Administrator shall prescribe for such contracts ap-
 4 propriate limits on the applicability of a deadline for sub-
 5 mission of bids or proposals that is required by subsection
 6 (a)(1). Such limits shall be incorporated in the Federal
 7 Acquisition Regulation.”.

8 **SEC. 8007. ADVOCATES FOR ACQUISITION OF COMMERCIAL**
 9 **AND NONDEVELOPMENTAL ITEMS.**

10 (a) **RESPONSIBILITIES OF THE ADVOCATE FOR COM-**
 11 **PETITION.**—Section 20(c) of the Office of Federal Pro-
 12 curement Policy Act (41 U.S.C. 418(c)) is amended to
 13 read as follows:

14 “(c) The advocate for competition for each procuring
 15 activity shall be responsible for promoting full and open
 16 competition, promoting the acquisition of commercial
 17 items and other nondevelopmental items, and challenging
 18 barriers to such acquisition, including such barriers as un-
 19 necessarily restrictive statements of need, unnecessarily
 20 detailed specifications, and unnecessarily burdensome con-
 21 tract clauses.”.

22 (b) **REPEAL OF SUPERSEDED PROVISION.**—Section
 23 28 of such Act (41 U.S.C. 424) is repealed.

April 21, 1984 (5:30 p.m.)

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8-23

1 **SEC. 8008. PROVISIONS NOT AFFECTED.**

2 Nothing in this title shall be construed as amending,
 3 modifying, or superseding, or as intended to impair or re-
 4 strict authorities or responsibilities under—

5 (1) section 111 of the Federal Property and
 6 Administrative Services Act of 1949 (40 U.S.C.
 7 759), popularly referred to as the "Brooks Auto-
 8 matic Data Processing Act";

9 (2) title IX of the Federal Property and Admin-
 10 istrative Services Act of 1949 (40 U.S.C. 541 et
 11 seq.), popularly referred to as the "Brooks Archi-
 12 tect-Engineers Act";

13 (3) section 8(a) of the Small Business Act (15
 14 U.S.C. 637(a)) or any other provision of that Act;
 15 or

16 (4) the Act of June 25, 1938 (41 U.S.C. 46-
 17 48c), that was revised and reenacted in the Act of
 18 June 23, 1971 (85 Stat. 77), popularly referred to
 19 as the "Javits-Wagner-O'Day Act".

20 **SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL**
 21 **GOVERNMENT USE OF MARKET RESEARCH.**

22 (a) **REPORT REQUIRED.**—Not later than 2 years
 23 after the date of the enactment of this Act, the Comptrol-
 24 ler General of the United States shall submit to the Con-
 25 gress a report on the use of market research by the Fed-

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8-24

1 eral Government in support of the procurement of com-
2 mercial items and nondevelopmental items.

3 (b) CONTENT OF REPORT.—The report shall include
4 the following:

5 (1) A review of existing Federal Government
6 market research efforts to gather data concerning
7 commercial and other nondevelopmental items.

8 (2) A review of the feasibility of creating a Gov-
9 ernment-wide data base for storing, retrieving, and
10 analyzing market data, including use of existing
11 Federal Government resources.

12 (3) Any recommendations for changes in law or
13 regulations that the Comptroller General considers
14 appropriate.

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9-1

1 **TITLE IX—EFFECTIVE DATES** 2 **AND IMPLEMENTATION**

3 **SEC. 9001. EFFECTIVE DATES.**

4 (a) **EFFECTIVE DATE OF ACT.**—Except as otherwise
 5 provided in this Act, this Act shall take effect on the date
 6 of the enactment of this Act.

7 (b) **EFFECTIVE DATE OF AMENDMENTS.**—Except as
 8 otherwise provided in this Act, the amendments made by
 9 this Act shall take effect on the date on which final imple-
 10 menting regulations are prescribed in accordance with sec-
 11 tion 9002.

12 **SEC. 9002. IMPLEMENTING REGULATIONS.**

13 (a) **PROPOSED CHANGES.**—Proposed changes to the
 14 Federal Acquisition Regulation and such other proposed
 15 regulations (or changes to existing regulations) as may be
 16 necessary to implement this Act shall be published in the
 17 Federal Register not later than 210 days after the date
 18 of the enactment of this Act.

19 (b) **PUBLIC COMMENT.**—The proposed regulations
 20 described in subsection (a) shall be made available for
 21 public comment for a period of not less than 60 days.

22 (c) **FINAL REGULATIONS.**—Final regulations shall be
 23 published in the Federal Register not later than 330 days
 24 after the date of enactment of this Act.

April 22, 1994 (9:45 a.m.)

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9-2

1 (d) APPLICABILITY.—(1) The amendments made by
2 this Act shall apply, in the manner prescribed in such final
3 regulations, to any solicitation that is issued or any unso-
4 licited proposal that is received on or after the date de-
5 scribed in paragraph (3).

6 (2) The amendments made by this Act shall apply,
7 to the extent and in the manner prescribed in such final
8 regulations, to any matter related to—

9 (A) a contract that is in effect on the date de-
10 scribed in paragraph (3);

11 (B) an offer under consideration on the date
12 described in paragraph (3); or

13 (C) any other proceeding or action that is ongo-
14 ing on the date described in paragraph (3).

15 (3) The date referred to in paragraphs (1) and (2)
16 is the date specified in such regulations, which—

17 (A) shall not be earlier than the end of the 30-
18 day period that begins on the date the regulations
19 required by subsection (c) are published; and

20 (B) shall not be later than October 1, 1995.

21 (e) SAVINGS PROVISION.—Nothing in this Act shall
22 be construed to affect the validity of any action taken or
23 any contract entered into prior to the date specified in
24 the regulations pursuant to subsection (d)(3) except to the
25 extent and in the manner prescribed in such regulations.

April 22, 1994 (9:45 a.m.)

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9-3

1 **SEC. 9003. EVALUATION BY THE COMPTROLLER GENERAL.**

2 (a) **EVALUATION RELATING TO ISSUANCE OF REGU-**
 3 **LATIONS.**—Not later than December 1, 1995, the Comp-
 4 troller General shall submit to the committees referred to
 5 in subsection (c) a report evaluating compliance with the
 6 requirements in section 9002, relating to the issuance of
 7 implementing regulations.

8 (b) **EVALUATION OF IMPLEMENTATION OF REGULA-**
 9 **TIONS.**—Not later than December 1, 1996, the Comptrol-
 10 ler General shall submit to the committees referred to in
 11 subsection (c) a report evaluating the effectiveness of the
 12 regulations implementing this Act in streamlining the ac-
 13 quisition system and fulfilling the other purposes of this
 14 Act.

15 (c) **COMMITTEES DESIGNATED TO RECEIVE THE RE-**
 16 **PORTS.**—The Comptroller General shall submit the re-
 17 ports required by this section to the Committees on Armed
 18 Services and on Governmental Affairs of the Senate and
 19 the Committees on Small Business on Government Oper-
 20 ations of the House of Representatives.

21 **SEC. 9004. DATA COLLECTION THROUGH THE FEDERAL**
 22 **PROCUREMENT DATA SYSTEM.**

23 (a) **DATA COLLECTION REQUIRED.**—The Federal
 24 Procurement Data System described in section 6(d)(4)(A)
 25 of the Office of Federal Procurement Policy Act (41
 26 U.S.C. 405(d)(4)(A)) shall be modified to collect from con-

April 22, 1994 (9:45 a.m.)

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9-4

1 tracts in excess of the simplified acquisition threshold data
2 pertaining to the following matters:

3 (1) Contract awards made pursuant to competi-
4 tions conducted pursuant to section 2323 of title 10,
5 United States Code, or section 8(c) of the Small
6 Business Act (15 U.S.C. 637(c)).

7 (2) Awards to business concerns owned and
8 controlled by women.

9 (3) Number of offers received in response to a
10 solicitation.

11 (4) Task order contracts.

12 (5) Contracts for the acquisition of commercial
13 items.

14 (b) DEFINITION.—In this section, the term “sim-
15 plified acquisition threshold” has the meaning given such
16 term in section 4 of the Office of Federal Procurement
17 Policy Act (41 U.S.C. 403).

**THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994
SECTION-BY-SECTION ANALYSIS**

TITLE I -- CONTRACT FORMATION

Subtitle A -- Competition Statutes

PART I -- ARMED SERVICES ACQUISITIONS

Subpart A -- Competition Requirements

Sec. 1001 would clarify references to the FAR, as recommended by the Section 800 Panel.

Sec. 1002 would amend 10 USC 2304(b) permitting an agency to exclude a particular firm in order to maintain an alternate source to ensure a continuous flow of supplies or services, satisfy a critical need for health, safety or other emergency supplies, or satisfy projected needs resulting from a high demand. The section also makes a technical change, moving a provision prohibiting class determinations to a new section of the code.

Sec. 1003 would clarify that a higher-ranking official within the DOD may approve the use of non-competitive procedures, as recommended by the Section 800 Panel.

Sec. 1004 would add a new section 2304a to Title 10, authorizing the use of task order contracts for advisory and assistance services and establishing a requirement that solicitations for such contracts shall ordinarily provide for multiple awards and for fair consideration of each awardee for task orders issued under the contracts where the contract period is to exceed 3 years and the contract is estimated to exceed \$10,000,000. This section is based on recommendations by the Section 800 Panel.

Sec. 1005 would establish a new exception to the requirement for the use of competitive procedures in 10 USC 2304 (c)(3) when contracting for the services an expert for use in litigation involving the federal government.

**Subpart B -- Planning, Solicitation,
Evaluation, and Award**

Sec. 1011 would clarify CICA's solicitation provisions requiring the disclosure of evaluation factors and subfactors and authorizing awards without discussions. Similar language was included in H.R. 3161 last year, and has been included in S. 55 (for civilian agencies) this year.

Sec. 1012 is a technical change, which would move a provision regarding the consideration of option pricing to a new section of the code, as recommended by the Section 800 Panel.

Sec. 1013 would require notice to all offerors as soon as practicable after date of contract award. This provision is a part of the accelerated debriefing and protest schedule established in Sections 1014 and 1401.

Sec. 1014 would require debriefings providing basic information on the award to unsuccessful offerors, to be held promptly, if requested within 3 days after receipt of notification of contract award. Similar language is included in S 555. The Section 800 Panel also recommended adding a debriefing requirement (with a longer time frame and less detail) to this section.

Sec. 1015 would require DOD to maintain protest files in protests to the Comptroller General, as recommended by the Section 800 Panel.

Sec. 1016 would authorize DOD to pay costs and fees in bid protest settlements, as recommended by the Section 800 Panel.

Sec. 1017 would add a new section a to Title 10 to establish two-phase selection procedures where it is anticipated that three or more offers will be received requiring a substantial amount of design work before a cost or price proposal can be developed and involving substantial proposal preparation costs. First step proposals are to be evaluated upon technical approach and qualifications while in the second step a specified number of offerors determined to be most highly qualified under step one will submit competitive proposals including full cost or price information.

Subpart C -- Kinds of Contracts

Sec. 1021 would repeal the requirement for a determination prior to the use of cost or incentive-type contracts, as recommended by the Section 800 Panel. Such determinations of the Federal Acquisition Regulation. The repeal of this section is not intended to encourage increased use of cost or incentive-type contracts.

Sec. 1022 would make technical and conforming changes recommended by the Section 800 panel and legislative counsel.

Subpart D -- Miscellaneous Competitive Statutes

Sec. 1031 would repeal 10 USC 2318, requiring annual reports by DOD competition advocates. The separate requirement for annual reports on competition by competition advocates of all agencies (in section 20(b) of the OFPP Act) would remain in effect.

PART II -- CIVILIAN AGENCY ACQUISITIONS

Subpart A -- Competition Requirements

Sec. 1051 would clarify references to the FAR, in the same manner as Sec. 1001.

Sec. 1052 would amend 41 USC 253 (b) permitting an agency to exclude a particular firm in order to maintain an alternate source for the purposes set forth in section 1002, and would move a provision prohibiting class determinations to a new section of the code, in the same manner as Sec. 1002.

Sec. 1053 would authorize higher-ranking officials in civilian agencies to approve the use of non-competitive procedures, in the same manner as Sec. 1003.

Sec. 1054 would add a new section 303H to the Federal Property Act, to address task order contracts for advisory and assistance services. This provision is identical to the provision added to Title 10 by Sec. 1004.

Sec. 1055 would establish for civilian agencies a new exception to the requirement for the use of competitive procedures in 41 USC 253(c)(3) for expert litigation services as set forth in section 1005 for Title 10. The section conforms the notice requirements in 41 USC 416(c) and 15 USC 637(c) and repeals an improperly codified provision that purports to exempt from CICA all IRS contracts to hire experts for the examination of tax returns or litigating actions under the Internal Revenue Code.

Sec. 1056 would amend 41 USC 253(d) to permit the use of other than competitive procedures for a follow-on lease for continued occupancy by federal agencies of space in buildings on a one-time basis for a period not to exceed 5 years upon a determination that there is a continuous need for the space, the space meets the agency's needs and that the space is offered at a fair market price.

Subpart B -- Planning, Solicitation, Evaluation, and Award

Sec. 1061 would clarify CICA's solicitation provisions requiring the disclosure of evaluation factors and subfactors and authorizing awards without discussions. Conforming changes to Title 10 would be made by Sec. 1011.

Sec. 1062 would move a provision regarding the consideration of option pricing to a new section of the code, in the same manner as section 1012.

Sec. 1063 would require notice to all offerors as soon as practicable after date of contract award. An identical change to Title 10 would be made by section 1013.

Sec. 1064 would require civilian agencies to promptly conduct debriefings providing basic information to unsuccessful offerors, if requested within 3 days after receipt of notice of contract award. An identical change to Title 10 would be made by section 1014.

Sec. 1065 would require civilian agencies to maintain protest files in protests to the Comptroller General, in the same manner as section 1015.

Sec. 1066 would authorize civilian agencies to pay costs and fees in bid protest settlements, in the same manner as section 1016.

Sec. 1067 would add a new section to 41 USC 251 to establish two-phase selection procedures having the same features as in section 1017.

Subpart C -- Kinds of Contracts

Sec. 1071 would repeal the requirement for a determination prior to the use of cost or incentive-type contracts in the same manner as section 1021. Such determinations are unnecessary in light of the acquisition planning requirements of the Federal Acquisition Regulation. The repeal of this section is not intended to encourage increased use of cost or incentive-type contracts.

Sec. 1072 would amend the Federal Property Act to add a new section 303J to permit civilian agencies to enter into multi-year contracts where sufficient appropriations are available and obligated and the agency head determines that the need for property or services is reasonably firm and continuing and such a contract is in the best interest of the United States.

Sec. 1073 would add to the Federal Property Act a new section 303K authorizing agencies to enter into contracts for severable services which cross fiscal years so long as the base period does not exceed one year.

Sec. 1074 would provide for the revision of the Federal Acquisition Regulation to govern federal agencies' exercise of authority to purchase goods and services under other agencies' contracts under 31 USC 1535, the "Economy Act" to require that each such purchase has appropriate approval and is made only under the appropriate circumstances.

PART III -- ACQUISITIONS GENERALLY

Sec. 1091 would amend the OFPP Act to provide that OFPP should prescribe guidance for executive agencies regarding consideration of the past performance of offerors in awarding contracts. The guidance would include evaluation standards, information collection and maintenance policies, and policies for

ensuring that offerors are provided an opportunity to submit past performance information.

Sec. 1092 would repeal Section 23 of the OFPP Act, which requires an annual report on competition each year through FY 1990, as recommended by the Section 800 Panel. The separate requirement for annual reports on competition by agency competition advocates (in section 20(b) of the OFPP Act) would remain in effect.

Subtitle B -- Truth in Negotiations

PART I -- ARMED SERVICES ACQUISITIONS

Sec. 1201 would repeal the sunset date for the \$500,000 cost or pricing data threshold, making the increase permanent and providing for a periodic inflation adjustment for the threshold. Although this provision would also repeal the statutory requirement for a DOD Inspector General report on the test, it is expected that the IG would routinely review and report on the Department's handling of below-threshold procurements.

Sec. 1202 would amend the TINA exceptions, as recommended by the Section 800 Panel, to cover contracts for services that are sold at catalog prices and modifications to commercial item contracts that would not change the commercial item to a non-commercial item.

Sec. 1203 would require a written determination for the submission of cost or pricing data in cases where the acquisition is below the TINA threshold or one of the TINA exceptions applies.

Sec. 1204 would add a new subsection (d) to Section 2306a, creating a new TINA exception for commercial items. The new exception would be available where competition is not practicable and the contracting officer develops or obtains price data under standards and procedures set forth in the Federal Acquisition Regulation that is adequate to determine price reasonableness. The Section 800 Panel recommended a similar exemption.

Sec. 1205 is a technical change, to cross-reference the new consolidated audit provision in section 2313, as recommended by the Section 800 Panel.

Sec. 1206 would provide for the issuance of regulations regarding types of information that must be submitted for the contracting officer to consider in determining price reasonableness when cost or pricing data are not required because the acquisition is not expected to exceed the \$500,000 threshold.

Sec. 1207 would authorize the parties to agree upon an appropriate effective date for certifications of cost or pricing data, as recommended by the Section 800 Panel.

Sec. 1208 would repeal the uncodified provisions that are codified in section 1206.

PART II -- CIVILIAN AGENCY ACQUISITIONS

Sec. 1251 would amend the Federal Property Act to add a new Section 304A codifying TINA for civilian agencies. The new provision would raise the civilian TINA threshold to \$500,000, with a provision for a periodic inflation adjustment, require regulations concerning information for price reasonableness determinations for contracts below the new threshold, and add a new TINA exemption for commercial items, parallel to the changes made for DOD in Part I.

Sec. 1252 would repeal the obsolete provision replaced by the new Section 304A.

Subtitle C -- Research and Development

Sec. 1301 would amend 10 USC 2358, to consolidate the R&D authority of the military departments and repeal redundant and obsolete authority, as recommended by the Section 800 Panel.

Sec. 1302 would amend 10 USC 2364, to delete specific R&D milestone requirements and give DOD broader discretion over specific implementing methodologies, as recommended by the Section 800 Panel.

Subtitle D -- Procurement Protests

PART I -- PROTESTS TO THE COMPTROLLER GENERAL

Sec. 1401 would amend 31 USC 3551 to make clear that the definition of protest covers protests of solicitations, cancellation of solicitations awards or proposed awards of contracts, and the cancellation of an award (where such cancellation is alleged to be based on improprieties in the award process) so as to be consistent with the definition set forth in section 1439 for the GSA Board.

Sec. 1402 would amend section 3553 of Title 31. Subsection (a) would make technical changes, to refer to calendar days instead of working days as recommended by the Sections 800 Panel.

Subsection (b) would permit contractors to begin performance, unless the contracting officer withholds an authorization to proceed with performance in the first ten days after contract award. A contracting officer could withhold authorization if he or she felt that a bid protest was likely and

that immediate performance would not be in the best interest of the United States. The provision is intended to avoid adding costs to the United States from starting, stopping, and restarting contract performance in cases where protests are considered likely and immediate performance is not necessary.

Sec. 1403 would amend 3554 of Title 31, regarding Comptroller General decisions on bid protests.

Subsection (a) would make technical changes to refer to calendar days instead of working days and to provide that an amendment that adds new ground of protest should be resolved to the maximum extent practicable, within the time period for final decision on the initial protest, as recommended by the Section 800 Panel.

Subsection (b) would provide that the Comptroller General may recommend the payment of attorneys fees in bid protest cases, rather than directing agencies to pay such fees. This provision would address questions that have been raised about the constitutionality of existing law. Similar language was included in H.R. 3161 in the last Congress and has been included in S. 556 in this Congress. This subsection would also authorize the payment of consultant and expert witness fees as well as attorneys fees in protest cases (as recommended by the Section 800 panel), and would limit all such fees to the levels established in the Equal Access to Justice Act.

Sec. 1404 would authorize the Comptroller General to issue regulations on the calculation of time periods and on electronic filings and disseminations, as recommended by the Section 800 Panel.

PART II -- PROTESTS IN THE FEDERAL COURTS

Sec. 1421 is a conforming change to Sec. 1422, giving the U.S. Court of Claims exclusive judicial jurisdiction over bid protests.

Sec. 1422 would give the U.S. Court of Claims exclusive judicial jurisdiction over bid protests, and eliminate district court jurisdiction over such protests, as recommended by the Section 800 Panel.

PART III -- PROTESTS IN PROCUREMENT OF AUTOMATIC DATA PROCESSING

Sec. 1431 would authorize the Administrator to revoke a delegation of authority after the award of a contract, where there is a finding of a violation of law or regulation in connection with the contract award. A similar provision is included in S. 555.

Sec. 1432 would clarify that at the request of an interested party, the Board shall review any decision by a contracting officer alleged to have violated a statute, regulation, or the conditions of any delegation of procurement authority. A similar provision was included in S. 555 earlier this year.

Sec. 1433 would amend Section 111(f)(3) of the Federal Property Act.

Subsection (a) would conform the schedule for GSBGA hearings on suspension of procurement authority to the time frames established in section 1402 and provide that preaward suspensions need not preclude continuance of the procurement process to point of award if the agency head determines such action to be in the best interest of the United States.

Subsection (b) would substitute calendar days for working days and require that an amendment that adds new grounds of protest be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest, as recommended by the Section 800 Panel.

Sec. 1434 would authorize the GSBGA to dismiss a protest that is frivolous, brought in bad faith, or does not state on its face a valid basis for protest. Similar provisions were included in S. 555 and recommended by the Section 800 Panel.

Sec. 1435 would authorize the payment of consultant and expert witness fees as well as attorneys' fees in protest cases (as recommended by the Section 800 Panel), and would limit all such fees to the levels established in the Equal Access to Justice Act.

Sec. 1436 would require public disclosure of any settlement agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds. This provision also authorizes agencies to make such payments from the judgment fund. A similar provision was included in S. 555.

Sec. 1437 is a conforming change to Sec. 1422, giving the U.S. Court of Claims exclusive judicial jurisdiction over bid protests.

Sec. 1438 would authorize the GSBGA to adopt appropriate rules and procedures which would, at a minimum, address the computation of time periods under the statute provide procedures for electronic filing and dissemination of documents; and provide for sanctions where a person brings a frivolous or bad faith protest, or willfully abuses the board's process. Similar provisions were recommended by the Section 800 Panel.

Sec. 1439 would amend the definition of "protest" in section 111(f)(9) of the Federal Property Act to clarify that the term covers protests of solicitations, cancellations of solicitations, award or proposed awards of contracts, and the cancellation of an award (where such cancellation is alleged to be based on improprieties in the award process). The same definition is provided for GAO in section 1401.

Subtitle E -- Definitions and Other Matters

PART I -- ARMED SERVICES ACQUISITIONS

Sec. 1501 would amend the definitions in 10 USC 2302 to cross-reference definitions in the OFPP Act, where appropriate.

Sec. 1502 would consolidate provisions on delegation of procurement functions, as recommended by the Section 800 Panel.

Sec. 1503 would streamline provisions on determinations and decisions, as recommended by the Section 800 Panel, while retaining the requirement that such findings be made in writing and retained for no less than 6 years.

Sec. 1504 would make technical changes to clarify the limitation on undefinitized contract actions, as recommended by the Section 800 Panel.

Sec. 1505 would repeal an obsolete provision regarding production special tooling, as recommended by the Section 800 Panel.

Sec. 1506 would clarify, as recommended by the Section 800 Panel, that the authority established in 10 USC 2381(a) to issue regulations on bids is vested in the Secretary of Defense, as well as the secretaries of the military departments.

PART II -- CIVILIAN AGENCY ACQUISITIONS

Sec. 1551 would amend the definitions in the Federal Property Act to cross-reference definitions in the OFPP Act, where appropriate.

Sec. 1552 would consolidate provisions on delegation of procurement functions, in the same manner as section 1502.

Sec. 1553 would streamline provisions on determinations and decisions, while retaining the requirement that such findings be made in writing and retained for no less than 6 years, in the same manner as section 1503.

Sec. 1554 would amend the Federal Property Act to provide that the GSA Administrator is to provide, upon request, any of the services he or she performs to other federal agencies, mixed-

ownership government corporations, the District of Columbia, or a qualified non-profit agency for the blind or other severely handicapped under the Javits-Wagner-O'Day Act and that the Administrator may provide for the use of federal supply schedules or other contracts by state or local governments, the District of Columbia, Puerto Rico, or Indian tribal governments.

TITLE II -- CONTRACT ADMINISTRATION

Subtitle A -- Contract Payment

PART I -- ARMED SERVICES ACQUISITIONS

Sec. 2001 would consolidate contract financing provisions for DOD in 10 USC 2307 provide for performance based progress payments whenever practical and repeal obsolete and superseded provisions, as recommended by the Section 800 Panel.

Sec. 2002 would repeal 10 USC 2355, which creates unique vouchering requirements for DOD, as recommended by the Section 800 Panel. The Office of Federal Procurement Policy should review existing vouchering systems and attempt to develop a standard, government-wide procedure

PART II -- CIVILIAN AGENCY ACQUISITIONS

Sec. 2051 would consolidate contract financing provisions for civilian agencies in Section 305 of the Federal Property Act, provide for performance based progress payments whenever practical, and ensure uniform requirements for progress payments by civilian agencies.

Subtitle B -- Cost Principles

PART I - ARMED SERVICES ACQUISITIONS

Sec. 2101 would amend the DOD contract cost principles in 10 USC 2324 to raise the threshold for coverage to \$500,000, with a periodic inflation adjustment for the threshold and eliminate the requirement for GAO reports. This bill would not adopt the Section 800 Panel's recommendation to repeal the statutory contract cost principles.

Sec. 2102 would repeal 10 USC 2382, which provides standby profit controls for use during national emergencies, as recommended by the Section 800 Panel. Contractor profits would continue to be negotiated pursuant to the principles established in the Federal Acquisition Regulation.

PART II - CIVILIAN AGENCY ACQUISITIONS

Sec. 2151 would amend Section 306 of the Federal Property Act to establish contract cost principles for civilian agencies. This provision would ensure uniform treatment of contract costs

by civilian agencies and the Department of Defense.

PART III - ACQUISITIONS GENERALLY

Sec. 2191 would repeal section 24 of the OFFPP Act, regarding travel expenses of government contractors, as recommended by the Section 800 Panel.

Subtitle C -- Audit and Access to Records

PART I -- ARMED SERVICES ACQUISITIONS

Sec. 2201 would amend 10 USC 2313 to provide a consolidated audit provision, prohibit a contracting agency preaward audit where the contracting officer determines that audit objectives can be met by any federal agency's audit occurring within one year preceding the contracting officer's determination and clarify that no special records need be created or maintained in connection with General Accounting Office access to records. The section also repeals superseded provisions as recommended by the Section 800 Panel.

PART II -- CIVILIAN AGENCY ACQUISITIONS

Sec. 2251 would add a new section 304B to the Federal Property Act to provide a consolidated audit provision for civilian agencies containing the same provisions as in section 2201 in order to ensure uniform audit authorities for civilian agencies and DOD.

Subtitle D -- Cost Accounting Standards

Sec. 2301 would amend 41 USC 422 to conform the application of Cost Accounting Standards to the new exemptions in the Truth in Negotiations Act for commercial items provided in sections 1202, 1204 and 1251.

Sec. 2302 would repeal an obsolete deadline for procedural regulations that have already been issued, while retaining the provision authorizing the issuance of such regulations.

Subtitle E -- Price, Delivery, and Product Quality

PART I -- ARMED SERVICES ACQUISITIONS

Sec. 2401 would repeal 10 USC 2383, which established special qualification requirements for contractors on spare parts contracts, as recommended by the Section 800 Panel.

Sec. 2402 would amend 10 USC 2403, on contractor warranties, to require the Department of Defense to establish guidelines and procedures for negotiating and administering contractor warranties. The Department should take steps to test innovative approaches to warranties, as suggested by the Section 800 report;

this provision, however, would not repeal 10 USC 2403, as recommended by the Section 800 Panel.

PART II -- ACQUISITIONS GENERALLY

Sec. 2451 would amend 41 USC 15 to expand authority for setoffs against assignees, as recommended by the Section 800 Panel.

Sec. 2452 would repeal an obsolete requirement for deposit of contracts with GAO, as recommended by the Section 800 Panel.

Subtitle F -- Claims and Disputes

PART I -- ARMED SERVICES ACQUISITIONS

Sec. 2501 would amend 10 USC 2410 establishing DOD-unique requirements for the certification of contract claims so that it would provide for a certification applicable only to requests for equitable adjustment and for relief under Public Law 85-804. 10 USC a concerning DOD certification requirement is repealed. Provisions of the Contract Disputes Act of 1978 (CDA) regarding the certification of claims would remain in effect and would govern only claims. The CDA certification would apply government-wide. Section 2501 would also codify a provision restricting legislative payment of claims to those referencing this section and/or acknowledging the inapplicability of this section.

Sec. 2502 would amend 10 USC 2405 to conform the time allowed for the filing of a claim, request for equitable adjustment or demand for payment under shipbuilding contracts to 6 years, the time allowed for such actions under other types of contracts. Subsection (c) of 10 USC 2405 concerning corrected certifications is repealed.

PART II -- ACQUISITIONS GENERALLY

Sec. 2551 would amend the Little Tucker Act to clarify the concurrent jurisdiction of district courts with the Claims Court over contract disputes, as recommended by the Section 800 Panel.

Sec. 2552 would amend the Contract Disputes Act to clarify the periods for filing claims. The section also raises thresholds for certifications, accelerated and small claims procedures; and reduces time period for filing actions in the Claims Court from 12 months to 90 days.

Sec. 2553 amends the Contract Disputes Act to extend time frame in which agencies have the authority to engage in alternative dispute resolution under that Act.

Sec. 2554 would require that a contracting officer make reasonable efforts to respond within 30 days to any written request from a small business for a decision concerning contract

administration. This section would create no rights under the Contract Disputes Act.

**TITLE III -- SERVICE SPECIFIC
AND MAJOR SYSTEM STATUTES**

Subtitle A -- Major Systems Statutes

Sec. 3001 would modify requirements for independent cost estimates and manpower estimates, as recommended by the Section 800 Panel.

Sec. 3002 would streamline requirements for program baseline descriptions and deviation reporting, as recommended by the Section 800 Panel. Although these modifications provide DOD with added flexibility, it is anticipated that the Department will continue to establish program baselines and provide essential program cost information.

Sec. 3003 would repeal the requirement to designate Defense Enterprise Programs, as recommended by the Section 800 Panel.

Sec. 3004 would repeal the requirement for competitive prototyping in major programs in 10 USC 2438, as recommended by the Section 800 Panel. It is anticipated that the Department will continue to consider competitive prototyping as an option in the acquisition planning process and to use competitive prototype strategies where appropriate.

Sec. 3005 would repeal the requirement for competitive alternative sources in major programs in 10 USC 2439, as recommended by the Section 800 Panel. It is anticipated that the Department will continue to consider competitive alternative sources as an option in the acquisition planning process, and to use competitive alternative sources where appropriate.

Subtitle B Testing Statutes

Sec. 3011 would amend 10 USC 138(c) to provide that DOD Director of Operational Test and Evaluation reports directly to the Secretary of Defense and Deputy Secretary of Defense without intervening review or approval.

Sec. 3012 would amend 10 USC 138 by adding a new provision requiring the DOD Director of Operational Test and Evaluation to conduct the live fire testing activities of the Department of Defense provided for under 10 USC 2366, and to include live fire testing activities in an annual report summarizing DOD operational test and evaluation activities required pursuant to 10 USC 138(f).

Sec. 3013 would amend 10 USC 138(b) by adding a requirement that the DOD Director of Operational Test and Evaluation submit an unclassified version of the annual report on operational test

and evaluation concurrently with any such report submitted in classified form.

Subtitle C--Service Specific Laws

Sec. 3021 would consolidate existing statutes authorizing the services to accept the gratuitous services of reserve officers and repeal superseded statutes, as recommended by the Section 800 Panel.

Sec. 3022 would streamline and consolidate existing law on the civil reserve air fleet, as recommended by the Section 800 Panel.

Sec. 3023 would add a new section 2350j to Title 10, authorizing international exchange of personnel, similar to the recommendation of the Section 800 Panel.

Sec. 3024 would repeal 10 USC 7203, which allowed the Secretary of the Navy to spend any appropriated Navy funds for scientific investigations and research, along with the authority to delegate this authority.

Sec. 3025 would repeal a prohibition on the assignment of naval vessel conversion, alteration, or repair based on a requirement that parts of the work be assigned to a particular type of shipyard or a geographic area.

Sec. 3026 would repeal a provision requiring the construction of naval vessels on the Pacific Coast as the President determines necessary to maintain shipyard facilities there, as recommended by the Section 800 Panel.

Sec. 3027 would provide authority to transfer by gift a vessel stricken from the Naval vessel register.

Sec. 3028 would consolidate existing provisions regarding naval salvage authority, as recommended by the Section 800 Panel.

Subtitle D -- DOD Commercial and Industrial Activities

Sec. 3051 would consolidate existing statutes on manufacture at DOD factories and arsenals and repeal superseded statutes, as recommended by the Section 800 Panel.

Sec. 3052 would codify requirements to establish advisory and assistance services as a separate item in budgets submitted to Congress and repeal the uncodified language. The Section 800 Panel recommended repeal of this provision.

Subtitle E -- Fuel and Energy-Related Laws

Sec. 3061 would consolidate and streamline statutes regarding contracts for storage, handling, and distribution of fuels, as recommended by the Section 800 Panel.

Subtitle F -- Fiscal Statutes

Sec. 3071 would amend 31 USC 3321 to clarify the authority to designate disbursing officers within DOD, as recommended by the Section 800 Panel.

Subtitle G -- Miscellaneous

Sec. 3081 would amend a provision regarding production, warehousing, and distribution of supplies to delete unnecessary and redundant language, as recommended by the Section 800 Panel.

Sec. 3082 would repeal an obsolete and redundant provision regarding product evaluation activities, as recommended by the Section 800 Panel.

Sec. 3083 would codify a provision limiting the lease of vessels, aircraft, and vehicles by the Department of Defense. The Section 800 Panel recommended repeal of this provision.

Sec. 3084 would permit the acquisition of U.S. manufactured soft drinks from a military exchange store located outside the U.S., for use outside the U.S., without the current restrictions contained in 10 USC 2424 (b)(1) and (b)(2).

Sec. 3085 repeals certain restrictions relating to the acquisition of recycled toner cartridges.

TITLE IV -- Simplified Acquisition Threshold and Socioeconomic, Small Business, And Miscellaneous Laws

Subtitle A -- Simplified Acquisition Threshold

PART I -- ESTABLISHMENT OF THRESHOLD

Sec. 4001 would amend the OFPP Act to establish a new simplified acquisition threshold of \$100,000, as recommended by the Section 800 Panel. This provision would continue data collection requirements on contracts between \$25,000 and \$100,000 for a period of two years after the new threshold goes into effect.

PART II -- SIMPLIFICATION OF PROCEDURES

Sec. 4011 would add a new section 29 to the OFPP Act, authorizing the use of simplified procedures for acquisitions under the simplified acquisition threshold, as recommended by the

Section 800 Panel. The section would also provide that regulations implementing the new simplified procedures provide that purchases not exceeding \$2,500 not be subject to the Small Business Act reservation requirement, or the Buy America Act, that federal employees who make such purchases are not to be classified as "procurement officials" under the OFPP Act, and that such purchases may be made, as such purchases currently are made, without a requirement to secure competitive quotations.

Sec. 4012 would reserve all contracts under the simplified acquisition threshold, except for those not exceeding \$2,500 for small business, and specifically authorize continued set-asides of all contracts under the simplified acquisition threshold for minority small business, as recommended by the Section 800 Panel.

Sec. 4013 would provide that for any purchase made pursuant to simplified acquisition procedures payment shall be made in accordance with the Prompt Payment Act within 15 days of receipt of invoice under appropriate circumstances.

Sec. 4014 would amend section 18 of the OFPP Act and section 8(e) of the Small Business Act to continue the requirement that a notice of any procurement over \$25,000 be published in the Commerce Business Daily 15 days prior to the issuance of a solicitation. After the issuance of this notice, the agency would be free to pursue any procedures described in the notice; the requirement to allow the 30 days for the submissions of bids and proposals would apply only to contracts in excess of the simplified acquisition threshold.

Sec. 4015 would amend the OFPP Act to provide that the OFPP Administrator in consultation with the appropriate federal agency heads may develop and implement a government-wide architecture or design for interoperable electronic commerce with specified capabilities. The section further provides that the notice provisions in the OFPP Act and Small Business Act shall be phased out for acquisitions below the simplified acquisition threshold as the OFPP Administrator certifies that the procuring agency or agency component has fully implemented a compliant electronic commerce architecture or design.

PART III -- APPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

Sec. 4021 would add a new section 30 to the OFPP Act, authorizing the Federal Acquisition Regulation to waive the applicability of future-enacted procurement laws on a class basis for contracts below the simplified acquisition threshold, unless the provision expressly prohibits such a waiver.

Sec. 4022 would exempt armed services procurements below the simplified acquisition threshold from various laws.

a) would exempt procurements below the simplified acquisition threshold from contingent fees certifications, as recommended by the Section 800 Panel.

b) would exempt procurements below the simplified acquisition threshold from the prohibition on limiting subcontractor direct sales to the United States, as recommended by the Section 800 Panel.

c) would exempt procurements below the simplified acquisition threshold from the audit requirements in 10 USC 2313, as recommended by the Section 800 Panel.

d) would exempt procurements below the simplified acquisition threshold from the requirement to identify suppliers and sources of supplies.

e) would exempt procurements below the simplified acquisition threshold from the requirement to identify suspended or debarred subcontractors. The Section 800 Panel recommended exempting such procurements from suspension and debarment provisions generally.

f) would exempt procurements below the simplified acquisition threshold from the preference for U.S. flag vessels, as that preference is applied to other than federal agencies, similar to the recommendation by the Section 800 Panel.

Sec. 4023 would exempt civilian agency procurements below the simplified acquisition threshold from various laws.

a) would exempt civilian agency procurements below the simplified acquisition threshold from contingent fees certifications, in the same manner as section 4022.

b) would exempt civilian agency procurements below the simplified acquisition threshold from the prohibition on limiting subcontractor direct sales to the United States, in the same manner as section 4022.

c) would exempt civilian agency procurements below the simplified acquisition threshold from audit requirements, in the same manner as section 4022.

Sec. 4024 would exempt procurements generally below the simplified acquisition threshold from various laws.

a) would make a technical change to the Byrd Amendment, substituting "simplified acquisition threshold" for "\$100,000", as recommended by the Section 800 Panel

b) would exempt procurements below the simplified acquisition threshold from the procedural requirements of the Anti-Kickback Act. The Section 800 Panel recommended exempting

such procurements from the anti-kickback laws generally.

c) would exempt procurements below the simplified acquisition threshold from the Miller Act, as recommended by the Section 800 Panel.

d) would exempt procurements below the simplified acquisition threshold from the Contract Work Hours and Safety Standards Act, as recommended by the Section 800 Panel.

e) would exempt procurements below the simplified acquisition threshold from the Drug-Free Workplace Act of 1988, as recommended by the Section 800 Panel.

f) would exempt procurements below the simplified acquisition threshold from the requirement to ship on American-Flag commercial vessels, as that requirement is applied to entities other than federal agencies a similar recommendation was made by the Section 800 Panel.

g) would make technical changes to the Procurement Integrity Act, substituting "simplified acquisition threshold" for "\$100,000," and making conforming changes.

h) would exempt procurements below the simplified acquisition threshold from the Solid Waste Disposal Act.

PART IV - CONFORMING AMENDMENTS

Sec. 4071 would make conforming amendments substituting "simplified acquisition threshold" for "small purchase threshold" in Title 10 provisions, as recommended by the Section 800 Panel. The changes in this Part will ensure that agencies have the intended flexibility to utilize streamlined procedures for acquisitions under the new threshold.

Sec. 4072 would make conforming amendments substituting "simplified acquisition threshold" for "small purchase threshold" in Title 41 provisions, in the same manner as section 4071. The section would also provide for an amendment to the Federal Property Act authorizing the use of simplified procedures for acquisitions of leases of real property whose annual rent does not exceed the simplified acquisition threshold.

Sec. 4073 would make conforming amendments substituting "simplified acquisition threshold" for "small purchase threshold" in the OFPP Act, as recommended by the Section 800 Panel.

Sec. 4074 would make conforming amendments substituting "simplified acquisition threshold" for "small purchase threshold" in the Small Business Act, as recommended by the Section 800 Panel.

PART V -- REVISION OF REGULATIONS

Sec. 4081(a) would require the FAR Council to review the Federal Acquisition Regulation to identify and amend, as appropriate, regulations that are applicable below the new simplified acquisition threshold.

Sec. 4081(b) would require agency heads to review supplemental regulations, policies, and procedures to identify and amend, as appropriate, regulations that are applicable below the new simplified acquisition threshold.

Subtitle B -- Socioeconomic and Small Business Laws

Sec. 4101 would make changes that conform to section 4102(c), which would repeal the Walsh-Healey Act.

Sec. 4102(a) would extend the conforming changes in Sec. 4101 to civilian agencies.

Sec. 4102(b) would repeal Section 306 of the Trade Agreements Act of 1979, an obsolete provision requiring a completed report on labor surplus areas, as recommended by the Section 800 Panel.

Sec. 4102(c) would repeal the Walsh-Healey Act, as recommended by the Section 800 Panel (except for the purpose of authorizing the Secretary of Labor to define the terms "regular dealer" and "manufacturer", because the definitions authorized under the Walsh-Healey Act have been adopted by a number of other statutes). A conforming amendment would be made to Section 2304(h) of title 10.

Sec. 4102(d) in a confirming change to section which would repeal the Walsh-Healey Act.

Sec. 4103 would amend the Small Business Act by striking 15 USC 644 subsections (e) and (f) concerning the priority of labor surplus area firms in small business set-asides and would repeal 10 USC 2305 note regarding notification of offerers of the certificate of competency process.

Sec. 4104 would amend the Small Business Act to extend government-wide the so-called "Section 1207 program for small business concerns owned and controlled by socially and economically disadvantaged individuals. The section would, among other things, permit agencies to restrict the competition to such concerns and include price evaluation preference of not more than 10 percent for such firms under unrestricted solicitations.

**Subtitle C -- Miscellaneous Armed Services
Acquisition Laws**

Sec. 4151 would codify a provision from the FY 1991 DOD Appropriations Act, which prohibits the use of appropriated funds to prepare materials, reports, lists, or analyses on the economic effect of acquisition programs in specific states or congressional districts, as recommended by the Section 800 Panel.

Sec. 4152 would amend 10 USC 2304 and 41 USC 253 to set forth the policy of Congress that no legislation be enacted which requires a procurement to be made from a specified source.

TITLE V -- ACQUISITION MANAGEMENT

Sec. 5001. Armed Services Acquisition Improvement Goals

1. Adds a new section to title 10 entitled "Performance-Based Management Acquisition Programs" which:

a. Sets forth congressional policy for DoD acquisition performance goals that DoD achieve on average, 90% of cost and schedule goals, and reduce to 8 years the average period for converting emerging technology into operational capability.

b. Directs Secretary of Defense to approve or define cost, performance and schedule goals for major acquisition programs, and directs DoD Comptroller to evaluate proposed cost goals.

c. Directs Secretary of Defense to identify and consider the continuing need for programs which are behind schedule, over budget, or noncompliant with requirements, considering known agency needs and the state of related technology, estimated costs and schedule, and to identify possible alternatives to these programs.

d. Requires Secretary of Defense to include in his annual report to Congress an assessment of the progress made in implementing this policy.

e. Requires Secretary of Defense to provide, within one year, for an enhanced system of incentives which relates pay, evaluation, and promotion to performance, including the extent to which worker performance contributes to achieving the DoD acquisition program cost, schedule, and performance goals established in this section.

f. Requires Secretary of Defense to report to Congress within one year, of any changes in law which are

necessary to further the purposes of the section.

Sec. 5002. Results-Oriented Acquisition Program Cycle

Requires Secretary of Defense to establish, by regulation, a simplified, results-oriented acquisition program cycle. In developing the regulations, the Secretary is to consider including: an integrated decision team; prototype development and testing; product integration, development and testing; production and integration. The Secretary shall also consider acquisition program approval on the basis of one major decision made prior to product integration and development.

Sec. 5003 would amend the National Defense Authorization Act for Fiscal Year 1994 to authorize the Secretary of Defense to designate six programs, including certain support contracts managed by the Defense Personnel Support Center the Fire Support Combined Arms Tactical Trainer program the Joint Direct Attack Munition program, the Joint Primary Aircraft Training program, the Commercial Derivative Aircraft program the Commercial Derivative Engine program defense acquisition pilot programs. The section would authorize the Secretary of Defense to implement the waivers and limitations contained in the Federal Acquisition Streamlining Act for the pilots 45 days after enactment of the Act would provide that the waivers or limits shall apply to contracts awarded or modified during the 45-day period or before that time, and would provide that the section only authorizes the six programs to be designated as pilots and sets forth the waivers and limits, it does not authorize or obligate funds for specific programs.

Subtitle B - Civilian Agency Acquisition

Sec. 5051 would add a new section to title 41 entitled "Performance-Based Management" which replicates for civilian agencies the policies and requirements set forth for DoD in section 5001, and extends to the civilian acquisition workforce the policies contained in chapter 87 of title 10.

Sec. 5052 requires OFPP Director, in consultation with agency heads, to develop a results-oriented acquisition process analogous to that to be developed by DoD under section 5002.

Subtitle C - Miscellaneous

Sec. 5091 would amend the OFPP Act to provide for exceptional performance awards for federal government contractors.

Sec. 5092 would make technical changes to 10 USC 2386 for the acquisition by DoD of intellectual property rights.

TITLE VI -- STANDARDS OF CONDUCT

Subtitle A -- Ethics Provisions

Sec. 6001 would amend the Procurement Integrity section of the OFPP Act to streamline the recusal provision; consolidate the revolving door ban with similar provisions applicable only to the Department of Defense; harmonize the gratuities provision with government-wide ethics provisions; revise certification provisions to eliminate unnecessary administrative burdens; and clarify several other provisions. An identical provision was passed by the Senate as an amendment to the DOD Authorization bill in 1991, but was never enacted into law.

Sec. 6002 would amend the criminal conflict of interest provision in 18 USC 208 to expressly cover persons who aid or abet violations. An identical provision was passed by the Senate as part of the 1991 Senate amendment.

Sec. 6003 would repeal several superseded and obsolete procurement ethics laws. These include --

- o The post-employment and revolving door provisions in sections 2397, 2397a, 2397b, and 2397c, of title 10; section 281 of title 18, section 801 of title 37; and Part A of Title VI of the Department of Energy Organization Act. Each of these provisions would be superseded by the amended Procurement Integrity provision and would have been repealed by the 1991 Senate amendment. All except for the provisions of the DOE Organization Act were recommended for repeal by the Section 800 Panel.
- o The DOD contractor gratuities provision in section 2207 of title 10 which has already been superseded by the enactment of the Procurement Integrity law.
- o The prohibition on doing business with persons convicted of defense-contract related felonies in section 2408 of title 10, which is unnecessary in light of existing suspension and debarment provisions.

Sec. 6004 addresses the implementation of the changes in this Subtitle. Similar provisions were included in the 1991 Senate amendment.

Subtitle B -- Additional Amendments

Sec. 6051 would add a new section 23 to the OFPP Act, which would prohibit the use of consultants to conduct evaluations or analyses of any aspect of a proposal if qualified federal employees are readily available to do the job, as determined in

accordance with standards and procedures prescribed in the Federal Acquisition Regulation. A similar provision was included in S. 554 earlier this year.

Sec. 6052 would repeal a section 17 of the OFPP Act, calling for a study and report that have already been issued.

Sec. 6053 would amend 41 USC 22 to eliminate need for a contract clause but would retain the prohibition against any member of Congress benefitting from any contract or agreement entered into by the U.S.

Sec. 6054 would amend section 22(a) of the OFPP Act to clarify that 60 days notice should be provided for significant changes to acquisition regulations unless there are compelling circumstances for an earlier effective date.

Subtitle C-Whistleblower Protection

Sec. 6101 would streamline and combine the two existing "whistleblower" protections for Defense Department contractor employees in Title 10.

Sec. 6102 would amend the Federal Property Act to create identical protection for "whistleblowers" who are employees of civilian agency contractors.

TITLE VII -- DEFENSE TRADE AND COOPERATION

Sec. 7001 would repeal obsolete and redundant provisions in the Buy American Act, as recommended by the Section 800 Panel.

Sec. 7002 would amend 10 USC 2531 to replace the term "Memorandums of Understanding" with the broader term "International Cooperative Agreements," and to expand the authorized scope of such agreements to cover logistics support, as recommended by the Section 800 Panel.

Sec. 7003 would provide added flexibility for acquisition, cross-servicing agreements, and standardization under joint and multilateral defense arrangements, as recommended by the Section 800 Panel.

TITLE VIII -- COMMERCIAL ITEMS

Sec. 8001 would amend the OFPP Act to add new definitions of "commercial item", "nondevelopmental item", "component", and "commercial component". Similar definitions of commercial and nondevelopmental items were recommended by the Section 800 Panel, and were included in S. 260 and H.R. 3161 in the last Congress.

Sec. 8002 would add a new section 33 to the OFPP Act to

create a preference for the acquisition of commercial items and, to the extent suitable commercial items are not available, other nondevelopmental items. Similar provisions were recommended by the Section 800 Panel.

Sec. 8003 would add a new section 34 to the OFPP Act to require the issuance of uniform contract clauses for commercial item contracts. This provision would also address market acceptance the use of firm, fixed price contracts or fixed price with economic price adjustment contracts for commercial items; and reliance on existing quality assurance systems for commercial items. Similar provisions were recommended by the Section 800 Panel, and were included in S. 260 and H.R. 3161 in the last Congress.

Sec. 8004 would authorize the applicability of future enacted procurement statutes to contracts and/or subcontracts for the acquisition of commercial items to be waived on a class basis, through the Federal Acquisition Regulation. The section would also authorize a waiver in the Federal Acquisition Regulation of the applicability of government-unique procurement requirements to subcontractors under prime contracts for commercial items where the prime contractor substantially transforms the commercial items and to subcontractor to prime contractors for noncommercial items where the subcontractor furnishes a commercial component.

Sec. 8005 would exempt commercial item procurements from the requirement to identify suppliers and sources of supplies; the prohibition on contingent fees; the requirement to identify suspended or debarred subcontractors; the preference for U.S. flag vessels, as that preference is applied to other than federal agencies; so-called "Fly American" requirements; the procedural requirements of the Anti-Kickback Act the Federal Water Pollution Control Act; the Clean Air Act the Contract Work Hours and Safety Standards Act; the certification requirements of the Procurement Integrity provision; the Drug-Free Workplace Act and contractor inventory accounting standards. This section would also restrict the applicability to commercial item contracts of the statutory prohibition on limiting subcontractor direct sales to the government. Similar exemptions were recommended by the Section 800 panel.

Sec. 8006 would authorize greater flexibility in setting deadlines for the submission of offers in contracts for the purchase of commercial items.

Sec. 8007 would amend the OFPP Act to give agency competition advocates the added responsibility of promoting the acquisition of commercial items and other nondevelopmental items. Similar provisions were included in S. 260 and H.R. 3161 in the last Congress.

Sec. 8008 would identify certain provisions that are not intended to be affected or modified by this Title. Similar language was included in H.R. 3161 in the last Congress.

Sec. 8009 would require a Comptroller General review of federal government use of market research. A similar provision was included in S. 260 and H.R. 3161 in the last Congress.

TITLE IX -- EFFECTIVE DATE AND IMPLEMENTATION

Sec. 9001 would provide that the Act is effective upon enactment and amendments made by the Act are effective on the date final implementing regulations are prescribed, unless otherwise provided.

Sec. 9002 would provide that proposed changes to the Federal Acquisition Regulation or other regulations as necessary to implement the Act shall be published in Federal Register 210 days after enactment shall be available for public comment for not less than 60 days and published as final not later than 330 days after enactment. The section would provide the rules for applicability of the Act.

Sec. 9003 would provide for the Comptroller General to evaluate and report to the appropriate committees of Congress on the issuance of the implementing regulations and on the effectiveness of those regulations.

Sec. 9004 would amend the OFPP Act to provide that the Federal Procurement Data System collect data regarding competitions pursuant to 10 USC 2323 or 15 USC 637(c), awards to women owned businesses, numbers of offers received under solicitations, task order contracts and contracts for commercial items.

Amendment by Senator Stevens, adopted by a voice vote in the
Governmental Affairs Committee, April 26, 1994, markup of S. 1507

Purpose: To strike simplified acquisition threshold exemptions for
military cargoes under 1904 Cargo Preference Act and
government-generated civilian cargoes under 1954 Cargo Preference Act,
and to strike commercial item exemptions for military cargoes under the
1904 Cargo Preference Act and government-generated civilian cargoes
under the 1954 Cargo Preference Act.

On page 4-13 of the Committee Substitute, strike lines 9 through 20.

On page 4-18 of the Committee Substitute, strike lines 11 through 21.

On page 8-16 of the Committee Substitute, strike lines 15 through 22.

On page 8-21 of the Committee Substitute, strike lines 1 through 7.

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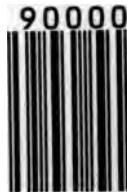
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